

# **OADBY AND WIGSTON BOROUGH COUNCIL**



## **HEALTH AND SAFETY AT WORK LAW ENFORCEMENT POLICY**

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**June 2008  
Updated June 2009**



**OADBY AND WIGSTON BOROUGH COUNCIL  
HEALTH & SAFETY AT WORK LAW ENFORCEMENT POLICY**

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**The document is in 3 parts -**

**Part 1 – The Council’s General Enforcement Policy**

**This part details the Council’s policy on all aspects of its enforcement work. It embraces the nationally recognised principles of good enforcement.**

**Part 2 - Enforcement Considerations Specific to Health and Safety at Work Law Enforcement**

**This part supplements Part 1 by adding policy matters that are specific to health and safety at work law enforcement.**

**Part 3 – Health and Safety at Work Law - Guidance and Procedures for Health and Safety at Work Enforcement Officers**

**This part provides the procedural detail to enable enforcement officers to apply the policy as the Council intends.**

**It is supporting guidance for officers and does not form part of the policy statement itself.**

**Part 3 will be updated regularly to take account of changes in technical and legal guidance and good practice.**



# **PART 1**

## **Oadby and Wigston Borough Council's Enforcement Policy**



# OADBY AND WIGSTON BOROUGH COUNCIL



## ENFORCEMENT POLICY

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Adopted - June 2008

Latest date for review - June 2011

# OADBY AND WIGSTON BOROUGH COUNCIL

## ENFORCEMENT POLICY

One of Oadby and Wigston Borough Council's principal duties is the regulation of a number of activities, the purpose of which is to secure adequate protection of the public and the environment.

We do this by applying laws which we have either the power or a duty to enforce.

It is our intention to apply these laws in a fair and consistent way.

To help us do so, this enforcement policy is adopted as our commitment to the principles of good enforcement.

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### 1. Introduction

1.1 This policy sets out what businesses and others who are regulated by Oadby and Wigston Borough Council can expect from our enforcement service. It commits us to –

- Protecting the public, the environment and groups such as consumers and workers
- Equitable and consistent enforcement actions
- Allowing and encouraging economic progress in our borough
- Taking care to help businesses and others meet their legal obligations
- Reducing unnecessary burdens on businesses
- Responding proportionately to regulatory breaches, including those of criminal behaviour which would have a damaging effect on legitimate business
- Taking firm action, including prosecution where appropriate, against those who persistently flout the law or act irresponsibly

1.2 By delivering these commitments, we believe we shall help to maintain a fair and safe trading environment and to promote the local economy.

1.3 We recognise that most businesses want to comply with the law and it is our commitment to help and encourage them to do so.

1.4 The policy is supported by appendices in which we have set out additional measures that will be adopted to enforce certain legislation, where specific guidance applies. This includes legislation relating to health and safety at work and food safety.

1.5 The policy and its appendices are based on advice and guidance from government departments (including the statutory Regulators' Compliance Code and the Enforcement Concordat), the Health and Safety Executive and its local authority unit, the Local Authorities Co-ordinators on Regulatory Services (LACORS), the Chartered Institute of Environmental Health, the Code for Crown Prosecutors and current best practice.

### 2. Aim and Application of this Policy

2.1 The aim of this policy is to ensure that all enforcement action we take is **proportionate, consistent, transparent, targeted and accountable**.

2.2 In applying this policy we will –

- Enforce only within our areas of responsibility
- Work with employers, businesses and/or proprietors to achieve compliance with the law through education, the provision of advice and information and inspection
- Apply a risk based approach that is proportionate, targeted and flexible
- Adopt the principles of good enforcement (see Appendix A)
- Set clear guidance for officers to follow
- Provide adequate resources to enable the policy to be carried out

### **3. Action under this policy**

3.1 The Council recognises and will use a variety of actions to carry out its enforcement policy. These include –

- Informal action, i.e. advice, assistance and education
- Issuing of a statutory notice – the type of statutory notice will be specified by individual laws. For the purposes of this policy, a statutory notice includes a fixed penalty notices
- Issuing of a formal caution
- Prosecution

3.2 Supporting guidance will be developed to identify officers who have sufficient training, knowledge and experience to make enforcement decisions (i.e. to determine which action is most appropriate).

3.3 When making enforcement decisions all officers who are authorised under this policy will abide by its requirements, its appendices and all supporting guidance.

3.4 Any departure from the policy will be exceptional, capable of justification and fully considered by the senior manager of the service before any decision is taken, unless it is considered that delaying the decision will cause significant and unacceptable risk to the public or the environment.

### **4. Competency of Enforcement Officers**

4.1 The council recognises that only appropriately authorised officers may carry out enforcement work and that authorised officers must have a competency level that is appropriate to the level at which they expected to enforce.

We therefore undertake to authorise officers both in accordance with our Constitution and the requirements of any specific legislation and guidance that may apply.

4.2 We will set guidelines to ensure that only officers with an appropriate level of competency are authorised, and that authorisation of an individual will reflect their level of competency.

4.3 We believe that competency may be demonstrated by a mix of training, qualification and experience and in order to maintain, develop and improve the competency of our enforcement officers, we will support the continuing professional development that is necessary to enable them to deliver this policy within the law and guidance that applies.

4.4 It is the responsibility of individual officers to keep a record of their own training and professional development, which will form part of the authority's record of ongoing training.

4.5 All authorised officers will be made aware of the requirements of this policy, where they are relevant to their operational duties. Initial training on recruitment and periodic refresher training of officers will be undertaken as necessary and their activities will be monitored to ensure compliance with this policy. This will be through regular management supervision.

## **5. Working with others**

5.1 The council recognises that many enforcement activities require an inter agency approach. In cases where this is necessary and appropriate, enforcement officers shall ensure that liaison is made with other interested bodies, in accordance with national and local guidelines.

## **6. Indemnification**

6.1 The council will indemnify officers that it has authorised against the whole of any damages or costs which may be involved, if it is satisfied that the officer honestly believed that the act or omission complained of was within their powers, that their duty as an officer entitled them to do it and that their action was appropriate given the information they had available at the time their decision was made.

6.2 Indemnification does not include any officer acting wilfully against instructions

6.3 Officers will be fully acquainted with the requirements of this policy and the procedures to carry it out and will carry out their duties at all times in support of and in compliance with this policy.

## **7. Review of Policy**

7.1 The policy will be reviewed regularly and developed to reflect changes in legislation or guidance. Reviews will also take into account improvements to the service and the particular interest in our authority of business owners and others that we regulate, their employees and the public.

7.2 In particular we will review the regulatory activity and interventions we carry out under this policy and consider the degree to which we may remove or reduce the regulatory burdens they impose.

7.3 Examples of when review will be undertaken include a change in legislation or guidance, a significant enforcement enquiry or dispute and as a result of feedback or consultation from businesses.

7.4 The next major review of this policy will be no later than 30<sup>th</sup> June 2011.

## **8. Complaints Procedure**

8.1 The council is committed to providing an easy way for anyone wishing to challenge or complain about our enforcement action. Any complaints about this policy or its application will be dealt with in accordance with our formal complaints procedure, a copy of which is available on request.

This policy was approved by Oadby and Wigston Borough Council's Services Committee on 10<sup>th</sup> June 2008.

## OADBY AND WIGSTON BOROUGH COUNCIL ENFORCEMENT POLICY

### PRINCIPLES OF GOOD REGULATION

Where enforcement action is necessary, Oadby and Wigston Borough Council is committed to the 5 principles of regulation, set by the Better Regulation Executive of the Department for Business, Enterprise and Regulatory Reform. These state that regulation should be –

**Proportionate      Consistent      Accountable      Transparent      Targeted**

In applying these 5 principles, we will –

1. Setting Clear Standards
2. Be Open
3. Be Helpful
4. Take Proportionate Action
5. Be Consistent
6. Have an Easy to Use Complaints Procedure.

#### **1. Setting clear standards**

We will set clear standards to show the levels of service and performance that residents of, businesses within, and visitors to the Borough can expect from us.

In setting these standards we will –

- \* Consult with businesses and other interested parties on the development of our standards.
- \* Publish performance against these standards at least once a year.
- \* Make readily available the results of our performance.

#### **2. Being Open**

We will assist individuals, organisations and businesses to understand what is expected of them and what they should expect from us. To achieve this, we will -

- \* Provide information and advice in plain language on the rules that we apply.
- \* Confirm advice in writing, if requested
- \* Disseminate this information as widely as possible and by as many means as possible.
- \* Be open about how we set about our work, including any charges we set.
- \* Clearly distinguish between statutory requirements and advice given to help raise standards above the minimum
- \* Consult with businesses, voluntary sectors, other organisations and residents of the Borough.

- \* Discuss general issues, specific compliance factors or problems with anyone experiencing difficulties.

### **3. Being Helpful**

We believe that prevention is better than cure and to put this into practice, we must work actively with businesses (especially small and medium sized businesses), and residents and visitors where appropriate, to advise and assist with compliance.

Therefore, we will provide

- \* A courteous and efficient service.
- \* Staff who identify themselves by name.
- \* A contact point and telephone number for future dealings with us.
- \* Encouragement for everyone dealing with us to ask for advice and information.
- \* Efficient and prompt dealing with applications for licences, registrations, approval of establishments, etc.
- \* Co-ordinated services to ensure that, wherever practicable, our enforcement services minimise unnecessary overlaps and time delays.
- \* Prompt, effective and simple communication of legal requirements to businesses and others that we regulate
- \* Provision of advice in a clear, concise and accessible form, using the language and choice of medium preferred by the business, wherever possible
- \* A means of assessing the effectiveness of advice and information that we provide

### **4. Taking 'Proportionate' Action**

In order to reduce the burden to businesses and minimise the costs they incur in compliance we will –

- \* Ensure any action we require is proportionate to the risk of harm occurring
- \* Develop effective risk assessment procedures and use these to target our resources to where they will be most effective (i.e, where risk is highest)
- \* Identify through the risk assessment process businesses that persistently break regulations and target action against them
- \* Identify factors that will influence our evaluation of likely non-compliance, such as past compliance records, the quality of risk management systems, management competence and willingness of the business to comply.
- \* Ensure no inspections of business premises take place without a reason
- \* Take particular care to work with small businesses and voluntary and community organisations so they can meet their legal obligations without unnecessary expense, given their size and the nature of their activities.

## 5. **Being Consistent**

We will –

- \* Carry out our duties in a fair, equitable and consistent manner.
- \* Have arrangements in place to promote consistency, especially where inspectors are expected to exercise judgement in individual cases.
- \* Work with other regulators to share data and coordinate inspections
- \* These arrangements will include effective liaison with other authorities and enforcement bodies at both local and national level.

## 6. **Having an Easy to Use Complaints Procedure**

If anyone wishes to complain about any aspect of the service they receive, we will –

- \* Provide a well-publicised, effective and timely complaints procedure, easily accessible to business, the public, employees and consumer groups.
- \* Explain any right of complaint or appeal, including details of the process and likely timescales, in any case where a dispute cannot be resolved.

### **Implementing the principles of good regulation**

To enable enforcement officers to carry out the principles set out in this appendix, guidance will be produced and they will be informed about how it is to be applied.

In turn, enforcement officers' implementation of the principles will be monitored as part of the normal management monitoring processes.



## **Part 2**

**Oadby and Wigston Borough Council's  
Enforcement Policy Supplement containing  
specific guidance that applies to enforcement  
of Health and Safety at Work Legislation**



# **OADBY AND WIGSTON BOROUGH COUNCIL**



## **HEALTH AND SAFETY AT WORK SAFETY LAW ENFORCEMENT POLICY SUPPLEMENT**

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**June 2008**



## **OADBY AND WIGSTON BOROUGH COUNCIL ENFORCEMENT POLICY**

### **Specific guidance applying to enforcement of the Health and Safety at Work, etc Act 1974**

#### **Partnerships, Communication and Joint Working**

Oadby and Wigston Borough Council believes that its health and safety enforcement is most effectively delivered in partnership and communication with other organisations which have an interest in, and/or are affected by, health and safety law.

Therefore we will make arrangements for developing and maintaining effective and efficient communication channels and working links with all appropriate bodies.

We are committed to communication with both the businesses and other organisations that we regulate and also with other regulators.

Exact arrangements of how this will be done will be documented in the form of guidance notes and delivered by the enforcement officers as part of their regulatory work.

#### **Mandatory Guidelines**

In developing and maintaining the competency of our officers, we will comply with mandatory guidance issued by the Health and Safety Executive to assist local authorities to fully comply with Section 18 of the Health and Safety at Work, etc. Act 1974.

A timetable for achieving full compliance will be set and monitored.

#### **Determining Appropriate Enforcement Action**

In addition to the principles of good enforcement and the Regulators' Compliance Code, the following shall be considered in the determination of appropriate enforcement action under the Health and Safety at Work etc. 1974 –

- HSC Enforcement Policy Statement
- Guidance issued by HELA (Circular 22/1)
- Application of the Enforcement Management Model (HECA Circular 22/18)
- Any Principal Authority Partnership between the business and another local authority, made under The Regulatory Enforcement and Sanctions Act 2008 and administered by the Local Better Regulation Office

Guidance will be issued to Enforcement Officers to help achieve proportionate and consistent decision making

## Death at Work

Where there has been a breach of law leading to a work related death, we will consider whether the circumstances of the case might justify a charge of manslaughter.

In doing so, we will take account of –

- Guidance in the document 'Work Related Deaths – A Protocol for Liaison', jointly published by Health and Safety Executive, the Crown Prosecution Service and the Association of Chief Police Officers.
- The Corporate Manslaughter and Corporate Homicide Act 2007

This supplement was updated in June 2009 to incorporate the Primary Authority Partnership scheme, administered by LBRO (the Local Better Regulation Office) under the Regulatory and Enforcement Sanctions Act 2008.

## **Part 3**

# **Oadby and Wigston Borough Council's guidance and procedures for officers who are applying health and safety at work legislation in the borough**



# **OADBY AND WIGSTON BOROUGH COUNCIL**



## **HEALTH AND SAFETY AT WORK**

### **ENFORCEMENT POLICY**

#### **Guidance and Procedures for Enforcement Officers**

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June 2008



# **HEALTH AND SAFETY AT WORK**

## **Guidance and Procedures for Enforcement Officers**

This guidance and procedures is written for reference by officers enforcing the Health and Safety at Work, etc Act 1974.

Its purpose is to ensure consistent application of the council's enforcement service, as it applies to health and safety at work.

It is to be followed at all times and may only be deviated from in agreement with a senior environmental health or legal manager, and then in compliance with the 'exceptions' requirement of our enforcement policy

The guidance and procedures will be reviewed regularly and updated when necessary

Throughout this guidance the term 'regulated entities' includes businesses and all other bodies (eg charities and voluntary sector organisations) that are subject to health and safety regulation by Oadby and Wigston Borough Council

This supplement was updated in June 2009 to incorporate the Primary Authority Partnership scheme administered by the Local Better Regulation Office (LBRO) under the Regulatory and Enforcement Sanctions Act 2008

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## **Reference Documents**

Many documents have been considered in the formation of this guidance, including laws that have an impact on the delivery such as The Human Rights Act 1998 and The Health and Safety at Work etc. Act 1974. A more detailed list will be found at Appendix A.

In addition, the Council has taken account of:-

- The principles of the Regulators Compliance Code (summarised in Appendix C of this policy).
- The principles of the Cabinet Office Enforcement Concordat (summarised in Appendix D)
- Mandatory guidance issued by the Health and Safety Commission to local authorities under Section 18 of the Health & Safety at Work etc. Act 1974.
- The law and guidance that applies to the Primary Authority Partnership scheme (from 6<sup>th</sup> April 2009)
- The 5 principles of regulation set by the Better Regulation Executive of the Department for Business, Enterprise and Regulatory Reform, which state that regulation should be :
  - Proportionate
  - Accountable
  - Targeted.
  - Consistent.
  - Transparent
- Our own Corporate Plan and Equal Opportunities Policy

## **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, we will take part in local and national benchmarking (including Inter-Authority Auditing) where we believe the resources needed to do this will be reflected in the improvements we are able to secure as a result.

## **PART 1**

### **GUIDANCE ON APPLYING THE REGULATORS' COMPLIANCE CODE**

The Regulators' Compliance Code is a statutory code of compliance applying to the regulatory function of local authorities.

It falls under the remit of the Department for Business, Enterprise and Regulatory Reform (BERR).

The code is a central part of the Government's Better Regulation Agenda.

Its objective is to embed a risk based, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to.

Its aim is to achieve the following –

- To increase the efficiency and effectiveness of local authority regulatory work.
- To produce maximum value from the resources put into regulation.
- To deliver significant benefits to low risk and compliant businesses through better focused inspection activity.
- To increase the provision of advice for businesses.
- To lower compliance costs.

The code promotes not only fairness and protection from harm, but also proportionate and flexible enforcement that will allow, and encourage where possible, economic progress.

The code stresses the need for regulators to adopt a positive and pro-active approach towards ensuring business compliance by -

- Helping and encouraging regulated bodies to understand and meet regulatory requirements more easily.
- Responding proportionately to regulatory breaches.

The code supports the regulators' responsibility to deliver desirable regulatory outcomes. This includes having effective policies to deal proportionately with criminal behaviour which would have a damaging affect on legitimate businesses and desirable regulatory outcomes. The code does not relieve regulated bodies of their responsibility to comply with their obligations under the law.

The code has statutory status, having been approved in accordance with Section 23 of the Legislative and Regulatory Reform Act 2006. There are 7 specific obligations placed on regulators by the code and these reflect the principles of good enforcement established in the Hampton Report. They are –

1. Economic progress – regulators to recognise that a key element of their activity will be to allow, and encourage where possible, economic progress and only to intervene where there is a clear case for protection.

2. Risk assessment – regulators to use comprehensive risk assessment to concentrate resources in the areas where they are most needed.
3. Inspections and other visits – no inspection shall take place without a reason.
4. Advice and guidance – regulators should provide authoritative, accessible advice both easily and cheaply.
5. Information requirements – businesses should not have to give unnecessary information or give the same piece of information twice.
6. Compliance and enforcement actions – the few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
7. Accountability – regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

The Regulators' Compliance Code came into force on 6 April 2008.

## PART 2

### Use of Risk Assessment in Health and Safety at Work Enforcement

The Council is committed to the use of comprehensive risk assessment in all its regulatory work, to ensure that resources are concentrated in areas that most need them.

We will ensure that enforcement officers are familiar with the following principle of risk assessment –

Risk assessment involves identifying and measuring the potential to cause harm and where that potential exists, evaluating the likelihood and extent of harm occurring.

We use this principal to assess the risks of our regulatory outcomes and to target our resources to where they will be most effective and where risk is highest.

The risk assessment process precedes and informs all aspects of our approaches to regulatory activity, including –

- Data collection and other information requirements.
- Inspection programmes.
- Advice and support programmes.
- Enforcement and sanctions.
- Accounting for the combined effect of the potential impact of non-compliance and the likelihood of non-compliance.

When we consider the likelihood of non-compliance we shall take account of –

- Past compliance records and potential future risks.
- The quality of systems for managing risks.
- Evidence of recognised external accreditation.
- Management of competence and willingness to comply.

We shall consult and involve regulated bodies and other interested parties when designing our risk methodologies, and publish details of methodologies.

Our risk methodologies will be reviewed regularly and improved where evidence suggests improvement can be achieved. Reviews will take account of feedback from those we regulate, our regulatory partners, official guidance and any other source that can inform and improve the risk assessment process,

## **PART 3**

### **PARTNERSHIPS & COMMUNICATION**

- 2.1 Oadby & Wigston Borough Council believes that its policy on Health and Safety Enforcement is most effectively delivered in partnership and communication with other organisations which have an interest in, and/or are affected by, health and safety law.

Therefore, we will make arrangements for developing and maintaining effective and efficient communication channels and working links with the following:-

- Businesses.
- Other regulated entities
- Statutory bodies.
- Trade organisations/associations.
- Professional institutions.
- Our Health & Safety Executive (HSE) Enforcement Liaison Officer
- HSE Regional Partnership Manager
- Other local authorities in Leicestershire and the Midlands

#### 2.2 Delivering our Partnerships and Communication Commitment

To put our commitment into practice, we will:-

- (i) Provide businesses with clear and jargon-free information and advice on how to comply with current health and safety legislation and standards.

*By doing this, we show how we put into practice the principles of transparency and openness.*

- (ii) Support the roles of HELA (the Health and Safety Executive/Local Authority Enforcement Liaison Committee - co-ordinating body for HSC and local authorities) and LACORS (Local authority coordinating body for regulatory services) in liaising between local authorities and the Health and Safety Executive to ensure that a co-ordinated and progressive approach to health and safety takes place.

- (iii) Support the Chartered Institute of Environmental Health Leicestershire Health and Safety Sub-Committee and its role as a forum for:-

- Developing consistency of enforcement.
- Organising training initiatives.
- Providing and co-ordinating approach to health and safety issues in the County.

- (iv) Support standing conferences on health and safety enforcement which facilitates and encourages interchange and discussion of views with the goal of developing a long-term consistency of approach.

- (v) Support local and national initiatives aimed at securing health and safety compliance, where we believe our resources input justifies the benefit to our business community.

- (vi) Pay particular attention to raising health and safety standards in small firms by identifying information from local and national initiatives, which will be of value to them and making sure they receive it.
- (vii) Work to achieve consistent enforcement standards by working with:-
  - The HSE.
  - The Department for Business, Enterprise and Regulatory Reform (BERR).
  - Local Better Regulations Office (LBRO)
  - Any local authorities that are partnering a business in a Primary Authority Partnership (Regulatory Enforcement and Sanctions Act 2008)
  - Lead authorities designated under the Lead Authority Partnership Scheme (LAPS), and any subsequent similar schemes that may supplement or replace LAPS
  - Local authorities in Leicestershire and the Midlands Region.
- (viii) Use the above in particular to -
  - Fulfil the HSC/HELA objective of reducing risks and protecting people.
  - Implement the HSC/HELA aims and priority progress.
  - Promote continuous improvement and long term compliance.
  - Promote particular initiatives such as the annual Fit 3 programme and *Revitalising Health and Safety 2000*.
- (ix) Keep all interested parties informed of information relating to our enforcement work (except where this may prejudice the success of action we are considering), including disclosure of information as permitted by the Health and Safety at Work Etc. Act 1974 (Section 28).

### 2.3 Communication with Regulated Entities

Where we request information from businesses or organisations that we regulate, we will consider the costs and benefits this information will bring to those bodies.

We will actively consider reducing costs to businesses and organisations by –

- Varying data requirements according to risk
- Limit collection of data to specific regulated bodies, sectors or sub sectors.
- Reducing the frequency of data collection.
- Obtaining data from another source
- Allowing electronic submissions.
- Requesting only data that is justified by risk assessment.

We will pay particular attention to the impact our regulatory interventions have on small regulated bodies and to the ensuring that any regulatory burden is fair and proportionate, given their size and the nature of their activities.

## 2.4 Communication with Other Regulators

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

Where we consider there will be improved regulatory outcomes that we could not have achieved by ourselves, we will consider authorising suitably competent officers from other regulating bodies by means of the flexible warrant system.

Where the Council requires information or holds information that another regulator has or needs, we will share this information on a reciprocal basis.

We will create effective consultation and feedback opportunities to maintain co-operative relationships between those we regulate and other interested parties.

Where an enforcement activity affects a geographical area beyond that of Oadby and Wigston, or involves enforcement by one or more other local authorities or organisations, all relevant authorities and organisations will be informed of the activity as soon as possible and all enforcement activity coordinated with them

Oadby and Wigston Borough Council may pass to or share information relating to wider regulatory matters with other regulatory bodies and enforcement agencies These may include

–

- Government agencies (eg Health and Safety Executive, Environment Agency)
- Police authorities
- Fire authorities
- The Health Protection Agency
- Statutory undertakers, such as Severn Trent Water
- Other local authorities

In order to avoid duplication of collection, where we hold information from a regulated entity and this information is needed by another regulator, we will share the information we hold, where this is practicable, beneficial and cost effective.

In return we expect this to be a reciprocal arrangement with other regulators.

With regard to application of The Data Protection Act 1998, we note the advice from the Information Commissioner on the avoidance of unnecessary restriction of data sharing.

Where appropriate and practical, we will collect data from regulated bodies in a way that is compatible with the processes they already use, and those of other regulators who collect similar data.

Where wider regulatory matters can be more effectively addressed through joint working, Oadby and Wigston Borough Council will consider entering into formal enforcement liaison policies, including Memoranda of Understanding, in appropriate cases.

Communication with regulated entities, other regulators and interested parties will be achieved by providing courteous and efficient services and taking account of feedback comments about the behaviour and activity of our enforcement officers.

## **PART 4**

### **AUTHORISATION & INDEMNIFICATION OF OFFICERS**

The Council recognises that only appropriately authorised personnel may undertake certain aspects of health and safety at work enforcement.

**We are committed to accounting for our health and safety at work enforcement actions by designating officers identified in Part 4 to take certain decisions.**

The purpose of Part 4 of this policy is to identify:-

- (i) Officers who are appointed and authorised to take enforcement action, and the limits of their delegation.  
Such officers are not limited to employees of Oadby and Wigston Borough Council, but may also be suitably competent officers of other local authorities and/or the Health and Safety Executive, where we believe the flexible warrant system will produce an improved and desirable regulatory outcome.
- (ii) The designation of those who may authorise a prosecution under the Health and Safety at Work etc. Act 1974, and other associated legislation.

Part 4 also includes the Council's Policy on indemnification of officers who are authorised to take enforcement and prosecution actions.

#### **Authorisation**

It is the policy of the Council that enforcement action under the Health and Safety at Work Etc. Act 1974, and associated legislation, should be initiated by suitably qualified, experienced and competent enforcement officers who have been duly appointed in accordance with HSC Guidance, (Ref. HSC(G)2 (REV) and the Council's Constitution Procedure (adopted on .....))

The Council recognises varying levels of complexity and intricacy in health and safety enforcement and may vary the powers conferred upon appointed officers, depending on their experience, qualifications and competency.

Therefore, only officers appointed by the authority under Section 19 of the Act will serve improvement and prohibition notices, where they are specifically authorised to do so.

## **Indemnification**

The Council will indemnify authorised officers against the whole of any damages and costs or expenses which may be involved if it is satisfied that the officer honestly believed that the act complained of was within their powers and that their duty as an officer entitled them to do it.

Indemnification does not include any officer acting wilfully against instructions.

## **Prosecution**

It is the policy of the Council that where, as a result of applying the principles of this document, a prosecution is appropriate, the following officers may authorise this action to begin:-

- (a) the Head of Legal and Licensing or
- (b) the Chief Executive.

In each case consultation with the Head of Environmental Health and/or the Director of Community Services will take place.

We may also consult with other officers and/or external advisors/experts where we believe it is appropriate to help secure the evidential test and the public interest test. (See Part 5.4 of this document).

All the above named officers will be aware of the limits of their delegated powers by referring to this Policy, the Council's Prosecutions Manual, the Statutory Codes of Practice and any other considerations which they believe relevant to the case.

References to these sources will determine whether or not a prosecution action proceeds.

## **Other Enforcement Action**

It is the Policy of the Council that Health and Safety at Work enforcement action other than prosecution may be instigated by any duly authorised Environmental Health Officer or Technical Officer, in consultation with the Head of Environmental Health, OR the Director of Community Services.

## **Competence of Health and Safety at Work Enforcement Officers**

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

In this respect we shall pay particular attention to Section 18 of the Health and Safety at Work etc. Act 1974, and we shall apply the Section 18 Standard to measure competence,

This applies to both our own officers and any officers authorised under the flexible warrant scheme.

### **Training**

In order to maintain, develop and improve the competency of its officers for Health and Safety at Work Enforcement, 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 and professional development and this will form part of the authority's record of ongoing training.

## **PART 5**

### **DECISIONS ON ENFORCEMENT OPTIONS**

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

This approach should be free from unfair or illegal discrimination.

We are therefore committed to ensuring a fair and balanced approach to all enforcement decisions, which relate to common standards to protect people at work and anyone affected by their work.

Our approach includes working with other agencies where there is a shared or complimentary enforcement role.

#### **ENFORCEMENT OPTIONS**

The Council recognises the following enforcement options –

- (1) Informal Action
- (2) Issuing of Statutory Notices
  - Improvement Notices
  - Prohibition Notices
- (3) Issuing of Formal Cautions
- (4) Prosecution

In Part 5 of this guidance, we set out how we decide which of the options is most appropriate to take.

Where the business in question is part of a formal Primary Authority Partnership, any decision we take with regard to an enforcement option will be consistent with and in compliance with the legislation and good practice guidance governing and informing such a partnership.

The options are considered having regard to the HSC document ‘Enforcement Policy Statement’ and supplementary guidance issued by HELA (Circular 22/1), application of the Enforcement Management Model (EMM) principles, as outlined in HELA circular 22/18 and consideration of the Regulators’ Compliance Code.

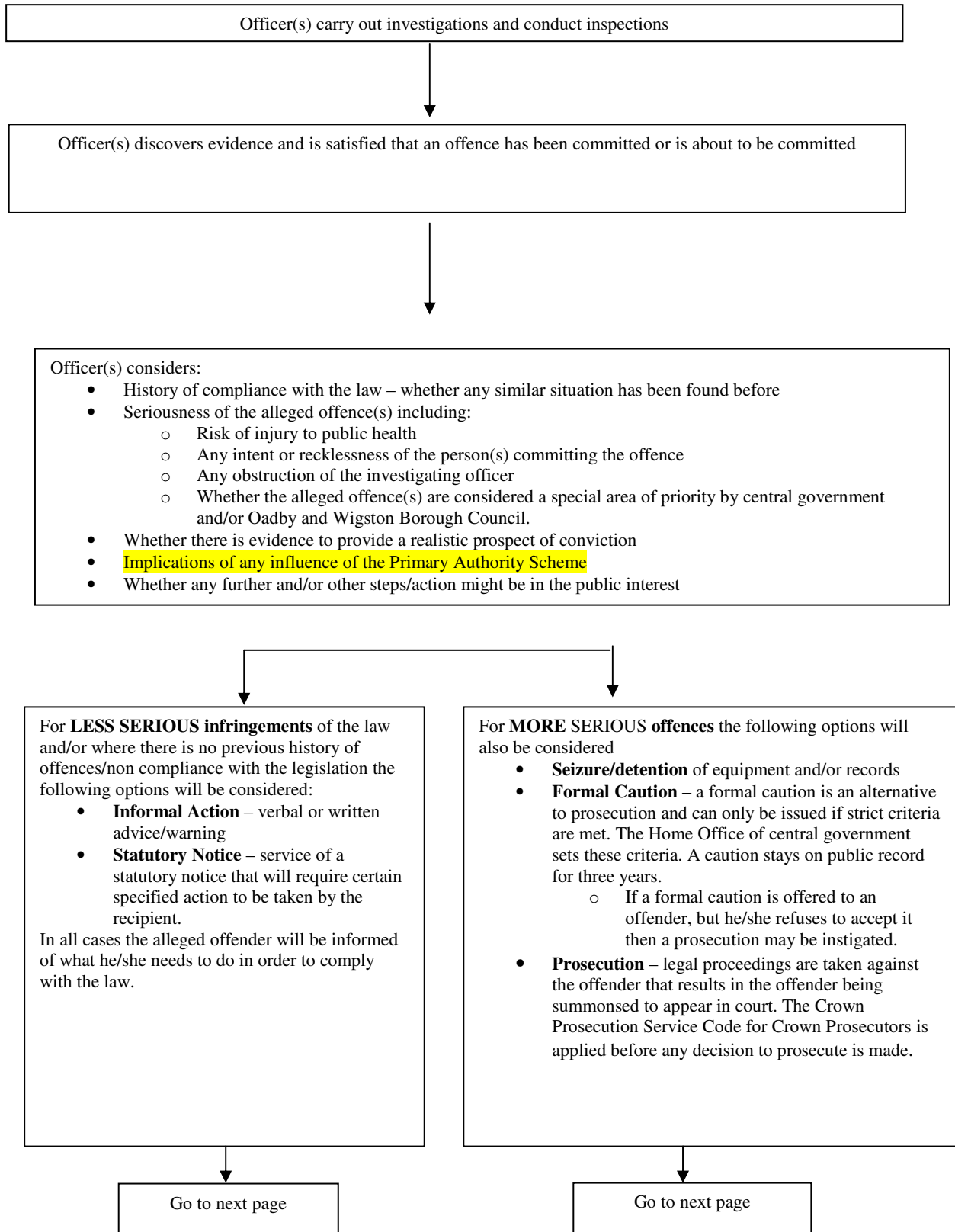
Where we consider that the compliance code is either irrelevant or outweighed by another relevant consideration, we may choose not to follow one or more of its provisions. However, such a departure will only be where properly reasoned and based on material evidence, and with approval of the Head of Environmental Health or Head of Legal Services.

Any decision we take with regard to an enforcement option will be consistent with recommendations of the Macrory Review (see Appendix E).

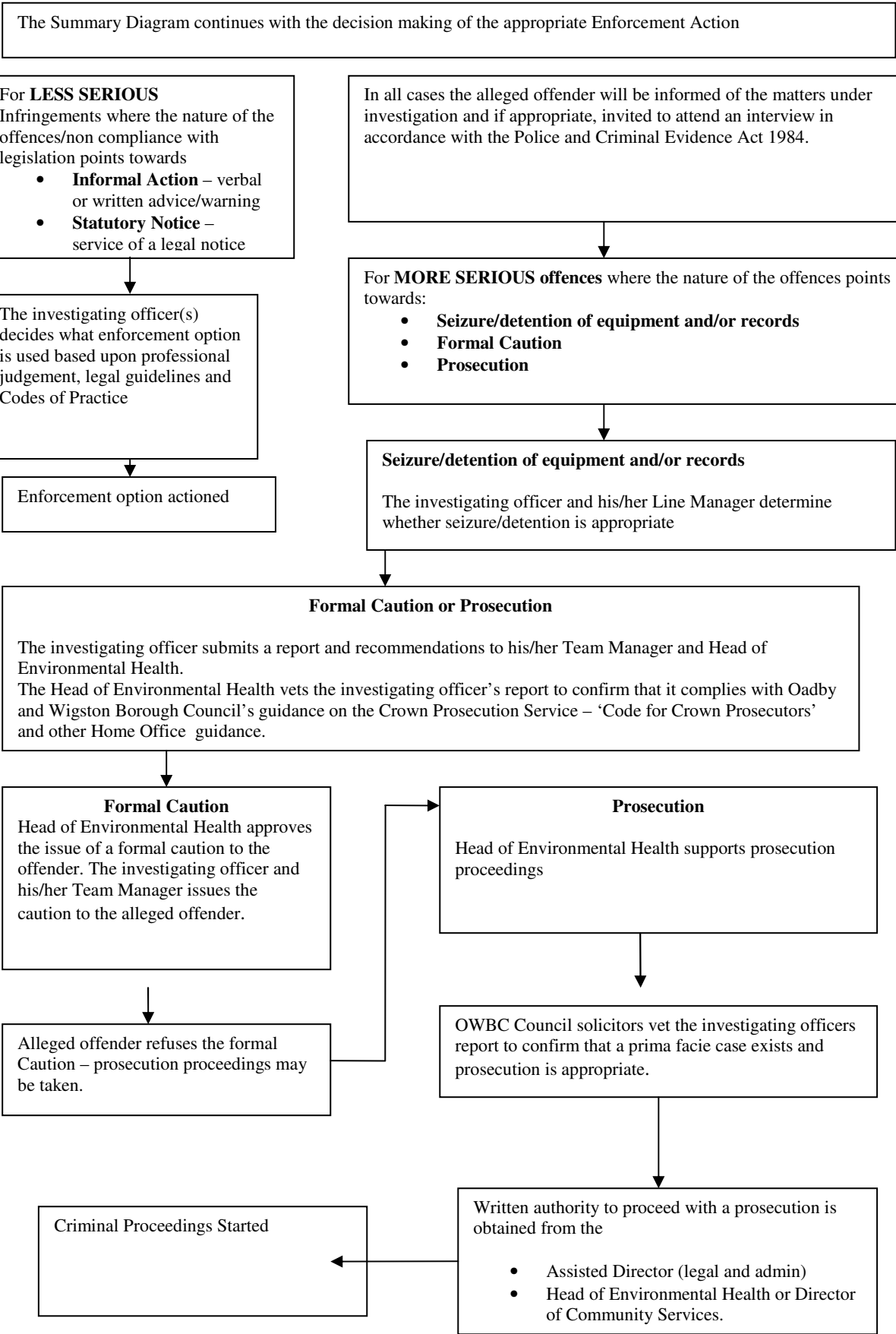
Further guidance on determining the appropriate enforcement action is set out in the flow chart on the next 2 pages.

## Factors to be Considered When taking Enforcement Action

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







Throughout this procedure, enforcement decisions will be tested against the

HSE Enforcement Management Model

## **5.1 Informal Action**

- (a) The purpose of informal action is to help the business proprietor to ensure the business complies with health and safety law.
- (b) Informal action may be taken at the discretion of an Authorised Officer.
- (c) Informal action may take the form of
  - advice, assistance or information
  - education
  - requests for action
  - warnings
- (d) This action may be oral or in writing (either by letter, e mail or written report).
- (e) Provision of education will include making available the CIEH Accredited training course 'Level 2 Award Health and Safety in the Workplace', where there is a demand for such a course and we have resources available to provide it.
- (f) The provision of advice, assistance, information and education will be used to meet some of the specific requirements of the Regulators' Compliance Code, notably –
  - stimulating economic progress
  - placing greater emphasis on support and advice
  - passing on relevant information to businesses by information packs rather than a visit for inspection.
  - rewarding regulated entities that have consistently achieved good levels of compliance by lighter inspections and reduced reporting requirements, where justified by risk assessment.
  - assisting in particular small and medium sized enterprises by explaining in simple terms the health and safety requirements of their business.
  - demonstrating accountability and transparency by encouraging feedback opportunities that will foster an active consultation by creating ongoing co-operative relationship with regulated entities and other interested parties.

Advisory services will normally be provided free of charge but we reserve the right to charge a reasonable fee for services beyond basic advice and guidance, where this is necessary to help ensure compliance.

In considering whether a fee might be appropriate, we shall take account of the needs and circumstances of smaller businesses and organisations that we regulate.

- (g) We will take informal action where one or more of the following apply –
  - (i) an act, omission or contravention is not serious enough to warrant formal action
  - (ii) the consequences of non-compliance will not pose a significant risk to public health
  - (iii) our previous history of the organisation, enterprise or individual suggests that informal action is likely to achieve compliance
  - (iv) confidence in the individual/enterprise's management is high

- (v) other significant circumstances apply, e.g. the business is associated with a voluntary organisation
- (h) When carrying out informal action, Authorised Officers will follow the up to date procedural guidance set out in (i) to (n) below in all cases, except where the 'Exceptions to Policy' clause applies.
- (i) The requirements of the Council's General Enforcement Policy relating to officer's conduct and use of plain language will be met.
- (j) The specific requirements of any policies and procedures contained in the Health and Safety at Work Enforcement Documents Library will be met, where they apply to informal actions.
- (k) 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.
- (l) 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
- (m) 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
- (n) Where an inspection or investigation reveals full compliance with the relevant Health and Safety legislation/Codes of Practice, no further action may be required, other than to issue a post inspection report.  
Details of the fact that the inspection revealed no action was required will be recorded on the premises file.

## **5.2 Statutory Notices**

### **5.2.1 Improvement Notices**

- (a) The purpose of an Improvement Notice is to specify in writing matters that are needed to help the business proprietor ensure compliance with the health and safety law, and to indicate a time within which such matters should be completed.
- (b) An Improvement Notice may be served at the discretion of an Authorised Officer.
- (c) We will serve an Improvement Notice on a business where one or more of the following apply –
  - (i) There are significant contraventions of health and safety law and they are likely to continue.
  - (ii) One or more health and safety contravention (s) have occurred and are likely to be repeated.
  - (iii) An informal approach has been tried but has not been successful, or the authorised Officer has reason to believe that such an approach would not succeed.
  - (iv) There is a documented history of non-compliance with health and safety legislation.
  - (v) In the case of new businesses or new requirements where the authorised Officer assessed that the proprietor is unwilling to comply or unlikely to do so, for whatever reason.
  - (vi) Standards are generally poor and the management has little awareness of requirements.
  - (vii) Effective action needs to be taken as quickly as possible to remedy conditions that are serious and deteriorating.
  - (viii) There is a risk of health or injury, but not so as to warrant a prohibition notice.
- (d) Improvement Notices will relate to the risk to health and safety and will not be issued for minor, technical contraventions unless we think an informal approach is unlikely to ensure compliance.
- (e) Improvement Notices will be signed only by an Authorised Officer who has witnessed the contravention.
- (f) Realistic time limits will be given for compliance with an Improvement Notice and where possible, these will be agreed as attainable and appropriate with the business proprietor.
- (g) The Authorised Officer will discuss with the proprietor the works that will be specified in the Notice and will explain the options that are available.

- (g) Failure to comply with an Improvement Notice will normally result in legal proceedings, in which case the section of this policy dealing with prosecutions will be consulted.
  - (h) When preparing for and serving an Improvement Notice, Authorised Officers will follow the guidance set out below in all cases except where the 'Exceptions to Policy' clause applies.
1. The requirements of the General Enforcement Policy relating to officer's conduct and use of plain language will be met.
  2. The specific requirements of any policies and procedures contained in the Health and Safety at Work Enforcement Documents Library will be met, where they apply to serving improvement notices.
  3. The specific requirements of the relevant Codes of Practice and Guidance on the use of statutory notices will be met.
  4. The Authorised Officer will discuss with the proprietor the works that will be specified in the Notice and will consider fully and then explain the options which are available.
  5. The Authorised Officer will have regard to the most appropriate language to be used for an Improvement Notice and will seek to meet this need where it can be done without unduly prolonging any risk to public health.
  6. We will notify other bodies of any formal action we take, or intend to take, where we believe it is appropriate to do so. Such bodies may include 'Lead' authorities and appropriate government offices.  
Where appropriate, notification will include the outcome of any action.

### **5.2.2 Prohibition Notices**

- (a) The purpose of serving a Prohibition Notice is to address without delay a situation of imminent risk of injury to health. This includes serious personal injury.
- b) A Prohibition Notice may be served at the discretion of an Authorised Officer, with the agreement of his/her line manager or Head of Department.
- (c) We will consider serving a Prohibition Notice only where the following circumstances apply –
  - (i) The officer's opinion is that an activity or activities at a premises involve, or will involve, a serious risk of personal injury.  
  
The number of people affected by the risk is not relevant.
  - (ii) Although risk may not be imminent, the officer's opinion is that the risk of serious personal injury is such that it can be controlled only by action without delay.

- (d) Prohibition Notices will be signed only by authorised, competent officers, hold appropriate qualifications and with relevant experience, and who have witnessed the matters to which the Notice relates.
- (e) When preparing to serve a Prohibition Notice, Authorised Officers will follow the guidance set out below in all cases except where the 'Exceptions to Policy' clause applies
  - 1. The requirements of the General Enforcement Policy relating to officer's conduct and use of plain language will be met.
  - 2. The specific requirements of any policies and procedures contained in the Health and Safety at Work Enforcement Documents Library will be met, where they apply to prohibition notices.
  - 3. The specific requirements of the relevant Codes of Practice and Guidance on the use of statutory notices will be met.
  - 4. We will notify other bodies of any formal action we taken, or intend to take, where we believe it is appropriate to do so. Such bodies may include 'Lead' authorities and the appropriate government offices. Where appropriate, notification will include the outcome of any action.

### **5.3 Formal Caution**

- (a) The purpose of a Formal 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 formal 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) This policy authorised the following Senior Managers to issue formal cautions –
- (i) The Head of Environmental Health  
(ii) The Director of Community Services
- (d) We will consider issuing a Formal Caution when the circumstances of the offence meet the criteria identified in the Home Office Circular 18/1994, or any circular that replaces it, and in accordance with current LACORS guidance.
- (e) We will ensure to our reasonable satisfaction that all the following conditions are met before a Formal 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 Formal Caution
  - the alleged offender gives formal consent to being cautioned
- (f) We will not consider a Formal Caution where we feel there is insufficient evidence to consider a prosecution.
- (g) When preparing for and serving a Formal Caution, Authorised Officers will follow the guidance set out below in all cases except where the ‘Exceptions to Policy’ clause applies -
1. The requirements of the General Enforcement Policy relating to officer’s conduct and use of plain language will be met.
  2. The specific requirements of the policies and procedures contained in the Health and Safety Enforcement Documents Library will be met, where they apply to Formal Cautions.
  3. The specific requirements of guidance issued by the Home Office on the administering of Formal Cautions will be followed.
  4. As there is no legal obligation for a person to accept a Formal Caution, when explaining their significance to a business proprietor, no officer shall apply pressure to that person to accept one.

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

5. The formal caution will be administered by an officer who we have authorised as a ‘cautioning officer’.
6. Normally, the caution will be administered in person by the cautioning officer, although in exceptional circumstances it may be administered by post.
7. Where we propose to issue a formal caution we will inform the offender in writing, using the form in Annex 1, document 1 of the Home Office Circular 18/1994.
8. We will issue all formal cautions in writing using the form in Annex 11, Document 2, of the Home Office Circular 18/1994 in the case of an individual, and Annex 11 Document 3 where the offence was committed by a company.
9. 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.
10. Should the offender refuse to accept a caution or fail to return the signed copies within 14 days, we are prepared in all cases to take legal proceedings.
11. We will record details of the offence in the specific premises file and in our formal caution file.
12. As soon as possible after issuing the caution, we will notify the Office of Fair Trading using the form in Annex 11 of Home Office Circular 18/1994. We will also send them a signed copy of the caution letter.
13. If, under any Lead or Primary Authority scheme at place at the time, there is an authority acting in this capacity for the business in question, we will notify them of the details of the caution.
14. Where the formal caution was issued as a result of an investigation begun by a complaint made by a third party, we will inform the complainant that the caution has been issued.
15. At all times we will be aware of time limits for issuing a caution (and subsequent prosecution) should clause (10) apply.

## **5.4 Prosecution**

### **5.4.1 General Guidance**

- (a) The purpose of prosecution is to deal with people or companies who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements and who put the public at serious risk or persistently and deliberately continue to contravene safety law.
- (b) Authorised Officers who believe the contraventions they are investigating are sufficient to warrant a prosecution will refer the details to officers designated in Part 4 of this guidance 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 and with reference to our Enforcement Policy Statement.
- (e) Criteria for prosecution will be related to risk(s) to health and safety or to the seriousness of an offence.
- (f) A breach of legislation will not automatically result in our instigating legal proceedings. However, a breach may warrant prosecution if one or more of the following apply to the alleged offence –
  - (i) There is blatant disregard for the law, particularly where law-breakers gain substantial economic advantages and the law-abiding are placed at relative disadvantage.
  - (ii) There has been reckless disregard for the health and safety of employees or others.
  - (iii) There have been repeated breaches of legal requirements and management appears either unwilling or unable to deal adequately with them.
  - (iv) A particular type of offence is prevalent in a particular area.
  - (v) There has been a previous accident/near miss or a case of disease arising from one or more substantial breaches of the law.
  - (vi) A particular offence has caused serious public concern.
  - (vii) There are persistent poor standards for control of health and safety hazards.

- (viii) The offender fails to comply in full or in part with the requirements of one or more statutory notices, unless exceptional circumstances exist.
- (ix) A formal caution has previously been issued for a similar offence.

#### **5.4.2 Preparing for a Prosecution**

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 Council’s Enforcement Policy
    - (ii) Code for Crown Prosecutors
    - (iii) The Council’s Prosecution Manual
    - (iv) The Health and Safety Commission’s Enforcement Policy Statement
    - (v) Polices and Procedures in the Health and Safety Law Enforcement Folder
    - (vi) Any relevant LACORS guidance
  - (b) Applying the ‘public interest’ test. (see Part 5.4.6)
  - (c) Ensuring that the case is supported by sufficient relevant evidence that is –
    - admissible
    - substantial
    - reliable
  - (d) Accounting for any likely defences.
  - (e) Accounting for any possible mitigations.
  - (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 defence, i.e. acting with reasonable care.
  - (i) The ability of any important witnesses and their willingness to co-operate.
  - (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 formal 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.

#### **5.4.3 Notification of Legal Proceedings**

1. We will inform any authority acting as Lead or Primary Authority at that time of prosecutions taken and their outcome, and this will be done in accordance with LACORS guidance.
2. We will also inform any government office or other body in a position to disseminate information that will be useful to other authorities, where this is good practice to do so.
3. Where the prosecution occurs as a result of an investigation begun by a complaint made by a third party, we will always advise the complainant of the outcome of the case.

#### **5.4.4 Factors to be considered**

Before deciding to prosecute, the following factors should 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 formal 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.

#### **5.4.5 The Evidential Test**

The investigating officer(s) together with the Principal EHO 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 the Principal EHO will also consider whether the evidence can be used and is reliable.

#### **5.4.6 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 Principal EHO 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.

#### **5.4.7 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.

#### **5.4.8 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 misjudgement.
- 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), Principal EHO, the Head of Environmental Health, and Oadby and Wigston Borough Council's Solicitors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

#### **5.4.9 Prosecution of Managers**

The Council recognises the option of prosecuting an individual with management responsibilities under certain circumstances.

Officers will consider this option only where an act or omission leading to the offence being committed was within the managerial control of the individual(s) concerned. Officers will also consider whether the Manager --

- (i) Clearly has effective control over the matter.
- (ii) Had personal knowledge of the circumstances surrounding the event (even if not necessarily personally aware of the matter(s) at fault).
- (iii) Had failed to take obvious steps to prevent the offence.
- (iv) Had been warned or made aware of his/her responsibilities concerning the act or omission in question and had received appropriate training and where management is shared between people at more than one level of seniority against whom it is possible to take proceedings, only in exceptional circumstances will the more junior levels be prosecuted without similar action against senior management.

In deciding whether this action is appropriate, officers will consider the management chain and the role-played by individual directors and managers.

Action against individuals will be considered where the inspection or investigation shows an offence was committed (a) with their consent or connivance, or (b) to have been attributable to their neglect **and** where it is appropriate to do so in accordance with this policy.

#### **5.5 Manslaughter**

Where an offence results in a death, the officer will liaise without delay with the Council's Legal Department to determine as quickly as possible whether the circumstances meet the legal test for manslaughter.

In making this judgement, officers will take account of –

- the guidance in *Work-Related Deaths: A Protocol for Liaison*, jointly published by HSE, ACPO and CPS, and supported by the LGA.
- The Corporate Manslaughter and Corporate Homicide Act 2007

Officers will consider particularly whether the death resulted from an act of gross negligence.

If the Police or the CPS decide not to pursue a manslaughter case, the Council will bring a health and safety prosecution if it is in accord with this policy.

HSE = Health and Safety Executive

ACPO = Association of Chief Police Officers

CPS = Crown Prosecution Service

LGA = Local Government Association

## **5.6 Guidance on Other Enforcement Options**

### **1. Forfeiture Proceedings**

In appropriate circumstances, and where the law enables us to do so, Oadby and Wigston Borough Council will make an application to a court for a forfeiture

### **2. Seizure and Detention of Equipment and Records**

The Health and Safety at Work Act, etc 1974 provides for authorised officers to seize and detain equipment and seize and detain records. Receipts for all items will be given to any person from whom equipment and/or records are seized.

### **3. Court Injunctions**

In appropriate circumstances, Oadby and Wigston Borough Council will apply for an injunction as an enforcement measure to deal with repeat offenders or dangerous circumstances.

An example of where we might consider this is offenders being found guilty of similar offences repeatedly.

#### 4 Refusal or Suspension or Revocation of Licenses or Approvals

Where premises/businesses require a licence and/or an approval to operate legally, refusal, suspension or revocation of that licence or approval will be considered where the controlling person or organisation –

- fails to meet the conditions or requirements or duties attached to the granting of the licence or approval
- deliberately or persistently breaches the legal requirements or duties where such breaches result in a risk of injury to health
- deliberately or persistently ignore letters, written warnings or formal notices

**PART 6**  
**THE PRIMARY AUTHORITY PARTNERSHIP**

Oadby and Wigston Borough Council recognises the status of the Primary Authority Partnership scheme, made under the Regulatory Enforcement and Sanctions Act 2008, administered by the Local Better Regulation Office and coming into force on 6<sup>th</sup> April 2009.

When an enforcement action is being considered against a business that has a properly made Primary Authority Partnership with another local authority for the area of business in question, due regard will be had to the current guidance contained in 'Primary Authority Guidance', published by LBRO.

The tables on the following two pages set out the procedure to be followed, depending on whether the Primary Authority does not object to the enforcing authority's proposed enforcement action (Table 6.1) or the Primary Authority does object to the enforcing authority's proposed enforcement action.

In order to keep up to date with the development and status of the Primary Authority Partnerships, officers enforcing food safety legislation will have access to the password protected pages of the LBRO website.

**LIST OF APPENDICES**

APPENDIX	A	Documents having an impact on the delivery of this policy
APPENDIX	B	The Council's Complaints Procedure
APPENDIX	C	The Regulators' Compliance Code
APPENDIX	D	The Enforcement Concordat
APPENDIX	E	The Macrory Review

## APPENDIX A

### DOCUMENTS HAVING AN IMPACT ON THE DELIVERY OF THIS POLICY

#### **Legislation covered by this Policy**

1. The Health and Safety at Work Act, etc 1974
2. All Regulations and Provisions contained in legislation consequential to The Health and Safety at Work, etc Act 1974.

#### **Legislation and other Guidance Documents**

The following legislation, guidance documents, policies and statement have been taken into account in the setting of this policy and will be taken into account in its implementation

The Human Rights Act 1998  
The Police and Criminal Evidence Act 1984  
The Data Protection Act 1998  
The Freedom of Information Act 2000  
Health and Safety at Work Act 1974 – Codes of Practice and Guidance Documents  
The Corporate Manslaughter and Corporate Homicide Act 2007  
The Legislative and Regulatory Reform Act 2006  
**The Regulatory and Enforcement Sanction Act 2008**

The Hampton Review  
The Regulators' Compliance Code  
(Issued by the Dept for Business Enterprise and Regulatory Reform in April 2008)  
Guidance on the Regulators' Compliance Code  
**Primary Authority Guidance (issued by LBRO)**  
The Macrory Review (published November 2006)  
The Cabinet Office Enforcement Concordat (issued 1998)  
LACORS Health and Safety Guidance  
(Local Authority Coordination Body on Regulatory Services)  
Home Office Circular 18/1994  
The Code for Crown Prosecutors (CoP No.2)

#### **Oadby and Wigston Borough Council Documents**

Corporate Plan  
Constitution  
Equal Opportunities Policy  
General Enforcement Policy  
Prosecutions Manual  
Best Value Performance Plan  
Local Performance Plan

## APPENDIX B

### COMPLAINTS PROCEDURE

**Oadby and Wigston Borough Council is committed to providing an efficient, effective, high quality service to all its customers.**

Wherever possible, we will try to –

- \* deal with complaints fairly
- \* find a satisfactory solution to all complaints
- \* put things right if necessary

**If you are unhappy about something we have done or a service we provide –**

1. Speak with the member of staff with whom you have been dealing.

**If you remain unhappy –**

2. Put your complaint in writing addressed to

Mr M Cregg MSc,  
Director of Community Services,  
Oadby and Wigston Borough Council,  
Council Offices,  
Station Road,  
Wigston,  
Leicestershire. LE18 2DR

Your complaint will be thoroughly investigated and you will be informed of the outcome within a maximum of 10 working days.

**If you are still not satisfied –**

3. Write to the Council's Chief Executive explaining why you are still unhappy with the responses you have received.

The Chief Executive will make an in-depth investigation of your complaint and report back to you.

**If you are dissatisfied with the findings you can –**

4. Take your complaint to a panel of local Councillors and then, if necessary -
5. Ask for your complaint to be examined by the Local Government Ombudsman.

If you do wish to use our Complaints Procedure, we strongly advise you to call 0116 2572601 and ask for a copy of our leaflet –

“How to make a Complaint about Council Services”

and/or a copy of the leaflet -

“How to Complain to the Local Ombudsman.”

## APPENDIX C

### PRINCIPLES OF THE REGULATORS' COMPLIANCE CODE

The Regulators' Compliance Code is a statutory code of compliance applying to the regulatory function of local authorities.

It falls under the remit of the Department for Business, Enterprise and Regulatory Reform (BERR).

The code is a central part of the Government's Better Regulation Agenda.

Its objective is to embed a risk based, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to.

Its aim is to achieve the following –

- To increase the efficiency and effectiveness of local authority regulatory work.
- To produce maximum value from the resources put into regulation.
- To deliver significant benefits to low risk and compliant businesses through better focused inspection activity.
- To increase the provision of advice for businesses.
- To lower compliance costs.

The code promotes not only fairness and protection from harm, but also proportionate and flexible enforcement that will allow, and encourage where possible, economic progress.

The code stresses the need for regulators to adopt a positive and pro-active approach towards ensuring business compliance by -

- Helping and encouraging regulated bodies to understand and meet regulatory requirements more easily.
- Responding proportionately to regulatory breaches.

The code supports the regulators' responsibility to deliver desirable regulatory outcomes. This includes having effective policies to deal proportionately with criminal behaviour which would have a damaging affect on legitimate businesses and desirable regulatory outcomes. The code does not relieve regulated bodies of their responsibility to comply with their obligations under the law.

The code has statutory status, having been approved in accordance with Section 23 of the Legislative and Regulatory Reform Act 2006. There are 7 specific obligations placed on regulators by the code and these reflect the principles of good enforcement established in the Hampton Report. They are –

1. Economic progress – regulators to recognise that a key element of their activity will be to allow, and encourage where possible, economic progress and only to intervene where there is a clear case for protection.
2. Risk assessment – regulators to use comprehensive risk assessment to concentrate resources in the areas where they are most needed.
3. Inspections and other visits – no inspection shall take place without a reason.

4. Advice and guidance – regulators should provide authoritative, accessible advice both easily and cheaply.
5. Information requirements – businesses should not have to give unnecessary information or give the same piece of information twice.
6. Compliance and enforcement actions – the few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
7. Accountability – regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

The Regulators' Compliance Code came into force on 6 April 2008.

## APPENDIX D

### **PRINCIPLES OF THE CABINET OFFICE ENFORCEMENT CONCORDAT**

In adopting the Cabinet Office Enforcement Concordat, we at Oadby and Wigston Borough Council have committed ourselves 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.

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

All residents of, businesses in, and visitors to the Borough will benefit from this policy through better information, choice and safety.

By adopting the Concordat we commit ourselves to the policies and procedures set out in this booklet, which in turn will contribute to the provision of ‘best value’ services.

For more information about how we carry out our enforcement work, ask for a copy of our Enforcement Policy and a copy of the Cabinet Office Enforcement Concordat.

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## **APPENDIX E**

### **THE MACRORY REVIEW**

The Macrory Review was published in November 2006 and made 9 recommendations, all of which were accepted by the government.

Their aim is to ensure that regulators have flexible sanctions that are proportionate and appropriate to the risks faced.

Oadby and Wigston Borough Council acknowledges the findings of the review and in applying sanctions and penalties, so far as we are able and where appropriate, we will aim to

- Change the behaviour of the offender
- Eliminate any financial gain or benefit from non-compliance
- Be responsive and consider what is appropriate for the particular offender and regulatory issue under investigation, including the punishment and public stigma associated with criminal conviction#
- Be proportionate to the nature of the offence and the harm caused
- Restore the harm caused by regulatory non-compliance
- Deter future non-compliance

In accordance with the Macrory recommendations, we will also –

- Publish an enforcement policy
- Measure outcomes as well as outputs
- Justify our choice of enforcement actions to interested parties
- Follow up enforcement actions, where appropriate
- Enforce in a transparent manner
- Be transparent in how we determine and apply penalties
- Avoid perverse incentives that might influence the choice of sanction
- Give clear reasons for formal enforcement action to the person or body against whom it is being taken, at the time the action is being taken, and confirm these actions in writing
- Provide details of complaints and appeals procedures at the time the investigation is being taken
- Manage our enforcement service to ensure fair and consistent interpretation among our own enforcement officers and among enforcement officers of like-minded entities in similar situations





