



Melton  
Borough  
Council

# **HEALTH AND SAFETY ENFORCEMENT POLICY**

**Issue 2**

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## **Introduction**

This document sets out what business and others being regulated can expect from Melton Borough Council's enforcement officers. It commits the Council to good enforcement policies and procedures. It lays down the generalised policy of the Council formerly based on the principles of good enforcement contained in the Enforcement Concordat, produced by Central Government and the new Statutory Code of Practice for Regulators (Compliance Code) produced by the Department for Business Enterprise & Regulatory Reform and supplemented by additional statements of enforcement policy of service units within the Council.

The Council takes into account advice contained in the Code for Crown Prosecutors, and endeavours to ensure that it supplements the advice outlined in specific enforcement guidance from other sources, including the Codes of Practice made under Section 40 of the Food Safety Act 1990 and the Compliance Code.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. Melton Borough Council is committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance by those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense, while only intervening where there is a clear case for protection. All citizens will reap the benefits of this policy through better information, choice and safety.

There are many instances where the enforcement responsibilities of the authority are shared by, or complimentary to, those of other agencies. Where these shared responsibilities exist, we will endeavour to set up, or join, liaison groups or working parties to ensure cost effective and efficient service delivery. Where situations occur in which shared enforcement with other agencies is appropriate, then a full exchange of information between those agencies will be implemented.

## **Part 1 - General Enforcement**

### **1. Economic Progress**

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

### **2. Risk Assessment**

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

### **3. Advice and Guidance**

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

### **4. Inspection and Other Visits**

- Inspections should only take place in line with risk assessment or where we are acting on other intelligence.

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

## **5. Information Requirements**

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

## **6. Compliance and Enforcement actions**

- The Council will reward businesses that have consistently achieved good levels of compliance through positive incentives such as a lighter touch.
- When considering taking enforcement action the Council will discuss the circumstances with those suspected of the breach and take these into consideration when deciding the best approach. This does not apply where immediate action is required.
- The Council will give clear reasons for any formal enforcement action to the person or entity against whom the action is being taken at the time the action is taken. These reasons should be confirmed in writing.
- The Council will ensure that we interpret and apply legal requirements and our enforcement policy consistently and fairly.

## **7. Accountability**

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

## **PART 2 – HEALTH & SAFETY ENFORCEMENT POLICY**

### **1. Scope**

This document applies to the Environmental Health, health & safety enforcement functions

### **2. Purpose**

The purpose of this document is to state the Authority's general policy with respect to health and safety law enforcement; following the principles of good enforcement contained in the Enforcement Concordat, Compliance Code and guidance issued by the Health and Safety Executive.

### **3. The General Policy**

This policy builds upon the principles of good enforcement set out in the Council's Enforcement Policy in relation to health & safety law enforcement.

This Council is committed to preventing accidents and ill health, in premises for which it is the enforcing authority, of employees, members of public and others who have cause to resort to the premises.

The emphasis of enforcement will be primarily based upon health and safety risks, the attitude of employers/businesses/owners and/or the seriousness of any contravention of health and safety standards.

It is the Council's aim to achieve and maintain consistency in its approach to enforcement. This Council will therefore put into place the required arrangements and procedures as per guidance issued by the Health and Safety Executive in order to comply with Section 18 of the Health & Safety at Work etc Act 1974.

If an enforcement matter is professionally contentious, or appears to be of national significance, or it is felt that existing guidance has not adequately taken account of the legal provision, Case Law, relevant research or other evidence, the matter will be put to the Health & Safety Technical Sub-Committee of the Leicestershire Branch of the Chartered Institute of Environmental Health for consideration and possible referral to national bodies in order to ensure consistent enforcement.

This Council will only enforce health and safety within its field of responsibility, that is, activities/premises being within the Council's geographical boundary which are so stipulated in the Health and Safety

(Enforcing Authority) Regulations 1998 (as amended) or are locally agreed with the Health and Safety Executive (HSE).

The Council will work with employers, businesses & proprietors to achieve legislative compliance, through inspection, education and the provision of advice and information as appropriate.

Only suitably qualified, trained officers will be authorised by the Council on health & safety law enforcement activities, with initial and refresher training consistent with those required by Section 18 guidance and departmental policies.

Officers will be fully equated with, and abide by, the policy when making enforcement decisions. Any departure from the policy will be exceptional, capable of justification and be fully considered by managers within the Environmental Health Service before the decision is taken, unless it is considered there is significant risk to the public in delaying the decision.

The policy will be fully documented and reviewed on a regular basis or when there is a major change or development in health and safety legislation or guidance.

#### **4. Complaints Policy**

We are committed to providing ready access to those wishing to appeal or complain about enforcement action, in accordance with the Council's corporate complaints procedure. However, areas where there is a formal right of appeal or a legal remedy must be resolved through the legal process.

Should anyone wish to complain, initially contact should be made with the Principal Environmental Health Officer. This may be by person, telephone, writing or e-mail. If not satisfied with the response at this stage, a written complaint should be made to the Head of Regulatory Services who will carry out a further investigation. If still unhappy at this stage, the Chief Executive should be asked to arrange for an independent review of the case.

At this point all the stages of the Council's Complaints Procedure will have been initiated and will have resolved the problem satisfactorily. If still dissatisfied the complainant can approach the Local Government Ombudsman for adjudication.

#### **5. Authorisation**

##### **5.1 Authorisations**

The purpose of this section is to state the Council's constitutional framework with respect to:-

- (a) Designating the officers who may authorise a prosecution under the Health & Safety legislation.
- (b) Identifying the limits of powers delegated to Health & Safety Enforcement Officers.
- (c) Identifying the competencies necessary for Health & Safety Enforcement Officers to be authorised to undertake enforcement action.
- (d) Indemnification of officers authorised to take enforcement and prosecution

Authorisation to prosecute in individual cases will be in accordance with the Council's current Constitution.

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 authorised) following Health & Safety Executive's guidance [Ref. HSC (G) 2(Rev)]; without further reference to either a committee, a designated Elected Member or a first/second tier Officer.

Only officers authorised by the Council under Sections 21 to 26 of the Health and Safety at Work etc. Act 1974 will serve improvement and prohibition notices.

## **5.2 The Delegation Framework**

- (a) Where, through upholding the principles outlined in the policy document, a prosecution is necessary, the following officer may authorise such action:-

Head of Regulatory Services.

- (b) The following designated Officers will also be consulted as part of the prosecution decision making process:-

Principal Environmental Health Officer

Other officers may be consulted in addition to external advisors / experts where appropriate.

- (c) The designated Officers who are responsible for authorising a prosecution will be aware of the limits of their delegated powers by reference to the Councils Constitution, Statutory Codes of Practice and any other forms of guidance, including the principles set out in this policy.
- (d) Only officers who have been authorised by the Council to issue Improvement Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.
- (e) Only officers who have been authorised by the Council to issue Prohibition Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.

### **5.3 Indemnification**

The Council will indemnify authorised officers against the whole of any damages and costs or expenses which may be involved, if the Council 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, providing the officer was not wilfully acting against instructions.

### **5.4 Training**

The criteria used to assess the competence of Health & Safety Enforcement Officers are those detailed in Council policy documents as well as specific requirements issued by the Health & Safety Executive in guidance on section18 compliance.

In addition the Council will provide appropriate initial and updated training to Health & Safety Enforcement Officers as is deemed necessary to enable them to carry out their duties efficiently and effectively. This will include the following:

- (a) Minimum update training of 10 hours per year for continual professional training.
- (b) Minimum of 15 hours revision training for authorised officers returning to health & safety enforcement.
- (c) Minimum of three months monitoring of newly qualified or Officers returning to health & safety law enforcement duties after an absence of more than 3 years.

In most instances, health & safety enforcement action other than prosecution will be instigated by Environmental Health Officers and Technical/ Scientific Officers.

## **6. Communication, Liaison and Partnerships**

This Council will ensure that effective and efficient channels of communication and working links are maintained and developed with businesses, statutory bodies, trade organisations/associations, professional institutions, the local HSE Enforcement Liaison Officer, HSE's Partnership Manager and other local authorities.

### **6.1 Policy**

This Council will provide businesses with clear and jargon-free information and advice on how to comply with current health and safety legislation and standards. The Council will exercise the principles of transparency and openness in relation to health and safety matters.

This Council supports the Health & Safety Executive/Local Authority Enforcement Liaison Committee (HELA) & Local Authority Co-ordinating Organisation on Regulatory Services (LACORS) in their role of 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.

This Council supports the Chartered Institute of Environmental Health's Leicestershire Health and Safety Sub-Committee as a forum for developing consistency of enforcement, organising training initiatives and as a means of providing a co-ordinated approach to health and safety issues.

## **7. Inspection and Enforcement Options**

This part of the document is to state the Council's policy with respect to:-

- a) Achieving and maintaining consistency of approach in making decisions relating to health and safety enforcement action.
- b) Ensuring commitment to an approach in all enforcement decisions that is fair and balanced, and relates to common standards that protect the people at work and those who may be affected by such work activities.

### **7.1 Inspection/Compliance Options**

To prioritise health and safety inspections of premises on a risk basis using HELA guidance.

In relation to small firms, follow the principles out-lined in relevant HELA guidance, eg 'Strategy For Workplace Health & Safety in Great Britain to 2010 & Beyond', as amended or revised.

To secure health and safety compliance, this Authority will take part in national and local initiatives, campaigns, projects etc. depending upon the resources available.

## **7.2 Enforcement Options**

When considering enforcement action, all officers from this Council will consider the Enforcement Management Model (EMM) principles (as outlined in HELA Circular 22/18) to promote consistency of approach.

Enforcement options that are available, having considered all relevant information and evidence are:-

- a) None
- b) Take informal action (advice, educational etc.)
- c) Issue statutory notices
- d) Issue Simple Cautions
- e) Prosecution

## **7.3 Policy**

### **7.3.1 Inspections**

Inspections will consist of a mixture of proactive (planned, risk-based) inspections (as outlined in HELA Circular 67/1 rev 3) and reactive (notifications, accidents, complaints etc.) inspections using issued HELA guidance and strategies.

### **7.3.2 Enforcement**

Informal Action

- a) Informal action can take the form of advice, a verbal warning or a request for action, in the following circumstances: -
  - i) Where an act, omission or contravention is not serious enough to warrant formal enforcement action; and

- ii) Previous history in terms of the management of health and safety would suggest that informal action will achieve compliance; and
  - iii) Confidence in the organisation, business, owner or occupier is high.
- b) All verbal warnings, advice or requests for action, at the time of the inspection or as a result of any subsequent conversations, meetings or visits, that raise additional matters, will be confirmed in writing.
- c) Where informal action is taken, legal requirements and recommendations will be clearly differentiated.

### **Formal Action**

#### a) Improvement Notices

Improvement notices will be issued when one or more of the criteria below apply: -

- There are significant contraventions of health and safety legislation and they are likely to continue.
- Where one or more health and safety contraventions have occurred and they are likely to be repeated.
- There is a lack of confidence in the business/proprietor's organisation of health and safety management.
- The business/proprietor has a history of non-compliance.
- Standards are generally poor and the business/proprietor has little awareness or appreciation of their legal duties or of statutory requirements.
- Effective action needs to be taken to remedy conditions that are serious and deteriorating.
- Where there is a risk of ill health or injury, but not so as to warrant a prohibition notice.

#### b) Prohibition Notices

A Prohibition Notice will only be considered in the following circumstance:

When an officer is of the opinion that an activity (or activities) carried on at a premises involve or will involve a risk of *serious*

*personal injury*. The number of people affected by the risk is not relevant.

Whilst the risk does not have to be imminent before an immediate prohibition notice can be served; such notices will only be served where a risk of serious personal injury is such as to require action to be taken without delay to control that risk.

#### **7.4 Public Register**

All improvement and prohibition notices that are served will be placed on the Authority's public register if they relate to matters of a public concern. This is a requirement of the Environment and Safety Information Act 1988.

### **8. Determination of Prosecution of Offenders**

This part details the criteria that the Council will take account of when considering legal proceedings.

#### **8.1 PROSECUTION POWERS**

The Local Authority always has the discretion whether or not to prosecute for an offence and the decision to prosecute should be based on the circumstances of each case. The criteria for prosecution must, in general, be related to risk or the seriousness of the offence, rather than being a punitive response to minor technical regulatory transgressions. All factors in the relevant Codes of Practice must be taken into account.

#### **8.2 Policy**

##### **8.2.1 Prosecution Criteria**

A breach of legislation will not automatically result in institution of legal proceedings. The circumstances, which are likely to warrant prosecution, may be characterised by one or more of the following criteria:-

- Where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the 'law-abiding' are placed at a disadvantage in relation to those who disregard it.
- Where there has been reckless disregard for the health and safety of employees or others.
- Where there have been repeated breaches of legal requirements in a premises and it appears management is either unwilling or unable to deal adequately with them.
- Where a particular type of offence is prevalent in a particular area.

- Where there has been a serious accident/near miss or a case of disease arising from one or more substantial legal contraventions.
- Where a particular transgression has caused serious public alarm or disquiet.
- Where there are persistent poor standards for control of health and safety hazards.
- The offence involves a failure to comply in full or part with the requirements of one or more statutory notices unless there are very exceptional circumstances.
- A Simple Caution has previously been issued for a similar offence.

### **8.2.2 Prosecution of Managers**

Officers will only consider a prosecution of a manager when an act or omission leading to the offence being committed was within their managerial capacity. When contemplating such action the officer will consider:

- Whether the matter is clearly one over which the manager concerned had effective control.
- Whether the manager had personal knowledge of the circumstances surrounding the event that merits prosecution, although not necessarily personally aware of the matters at fault.
- Whether the manager failed to take obvious steps to prevent the event that is the subject of the proposed prosecution.
- Whether the manager received previous advice or warning of their responsibilities in relation to the type of act or omission in question.
- Where management is shared between two or more levels of managers, against whom it is possible to take proceedings. Only exceptionally should the more junior levels be prosecuted without similar action being taken against senior management.

### **8.3 Summary or Indictment?**

Many offences referred for prosecution will be heard in a Magistrates Court.

However, certain offences are classed as triable either way offences & can be tried summarily in a Magistrates Court or on indictment in a Crown Court.

In the first instance all cases are heard in a Magistrates Court. Where an offence is `either way` & the defendant pleads guilty the facts will be heard & the Magistrates determine whether their sentencing powers are sufficient to deal with the offence. Where they do not consider they are adequate, the Magistrates refer the matter to Crown Court for sentencing.

Where a defendant facing an either way offence indicates that he would plead not guilty if the matter were to proceed to trial, then the Prosecutor & the accused are asked in turn which appears to be more suitable, summary trial or trial on indictment. When determining the Prosecutor's recommendation the Enforcement Officer & the Prosecutor will consider:

- The gravity of the offence;
- The adequacy or otherwise of the powers of the summary court to punish the offence;
- The record of the offender;
- The magnitude of the risk; and
- Any circumstances causing particularly great public alarm.

The Magistrates then decide which mode of trial appears more suitable, having regard to the nature of the case, whether the circumstances make the offence one of a serious character, & whether their powers would be adequate.

Where the Magistrates determine that the case can be tried in their Court, the accused can still elect to be tried in the Crown Court.

#### **8.4 The Prosecutors Code**

A prosecution will only proceed where the Evidential & Public Interest Tests are satisfied according to this code of practice.

#### **8.5 Manslaughter**

The officer will clarify at an early stage, for an offence involving a workplace fatality, as to whether the circumstances meet the legal test for manslaughter.

The officer will consider whether an act of gross negligence by an individual resulted in a death at work.

If the officer is of the opinion that the accident passes the test for manslaughter, then they will refer the matter to the police or the Crown Prosecution Service, as appropriate.

## **9. Use of Simple Cautions**

The aim of a Simple Caution is to: -

- a) Deal quickly and simply with less serious offenders;
- b) Divert them from unnecessary appearance in the criminal courts; and/or
- c) Reduce the chances of their re-offending.

### **9.1 Policy**

It is the policy of this Council that: -

- a) A person will only receive a Simple Caution when the circumstances of the offence meet the criteria identified in the Home Office Circular 30/2005.
- b) The Simple Caution will be administered by the "Cautioning Officer" from Environmental Health, who is the Head of Regulatory Services. Normally the Simple Caution will be administered in person by the "Cautioning Officer".  
  
In *exceptional* circumstances the Simple Caution may be administered by post.
- c) The offender will be advised in writing of the proposal to issue a Simple Caution.
- d) The Simple Caution will be in writing using the prescribed form. Two copies of the form will be signed by the person receiving the caution; each copy will then be signed by the person administering the Caution. One of the copies will then be issued to the person receiving the Caution.
- e) Where the offender refuses to accept a Simple Caution or fails to return the signed copies within 14 days, consideration will be given to the institution of legal proceedings.

## **10. Monitoring of Investigations**

This part details the communication & monitoring of the Council's actions to complainants & to businesses affected by enforcement decisions to either prosecute or issue of a Simple Caution.

### **10.1 Policy**

Officers will keep any complainants informed on the progress of the investigation into their complaint & upon the final results of the case at its conclusion.

Decisions on enforcement action, especially with respect to the issue of Simple Cautions or to prosecute must be taken in a timely manner upon the conclusion of the investigation. These enforcement decisions should be communicated to the affected parties without undue delay.

The Principal Environmental Health Officer will monitor Officer's workloads, investigations being conducted and compliance with timescales.

Where a decision to prosecute has been taken, regular monitoring of the case will be made by the Principal Environmental Health Officer or in their absence the Head of Regulatory Services to ensure there is no undue delay in concluding the case.