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| **Statutory Nuisance (*not noise*) Enforcement and Prosecution Guidelines** |

**Aims of Guidelines**

To ensure a consistent approach to enforcing legislation concerning statutory nuisances within Havant Borough Council.

To provide officers with guidelines to enable them to make consistent decisions in the field.

**INTRODUCTION**

The Council's approach to enforcement reflects the terms of the Government's [Enforcement Concordat](file:///C:\Liveweb53\immpreview.aspx%3fkey=%7bA7D18EAA-9E38-4291-B99B-3C7CF734A4C6%7d&page=4582) to which the Council agreed in February 2001 and complies with the [Council Policy for Regulation and Enforcement](http://www.havant.gov.uk/havant-9960) for all Council regulators confirmed by the Executive on 22 October 2008.

Under [Section 79 the Environmental Protection Act 1990](https://www.legislation.gov.uk/ukpga/1990/43/section/79), local authorities are required to act if they are satisfied that a statutory nuisance exists, or is likely to occur or recur in their area. The Council has under this Act a range of powers to enable it to fulfil the duties for which it is responsible.

The primary responsibility for compliance lies with individuals and businesses, who are responsible for the nuisance or who own or occupy houses where the nuisance arises.

These guidelines direct that enforcement action, be it verbal warnings, the issue of written warnings or statutory notices, prosecution, etc, is primarily based upon a measured response to the seriousness of the problem. Formal enforcement action will not usually, therefore, constitute the first response to allegations of alleged nuisance.

All authorised officers when making enforcement decisions shall abide by these guidelines. Any departure from the guidelines will be exceptional, capable of justification and be fully considered by the Senior Environmental Health Officer before the decision is taken, unless it is considered that there is significant risk to the public in delaying the decision.

All authorised officers should be fully acquainted with the requirements of these guidelines and any future amendments made thereof.

**DECISION MAKING**

Prior to the service of any statutory notice, except in the case of an emergency, the case officer shall fill out a Statutory Nuisance Abatement decision checklist for service of notice. This checklist requires the case officer to seek approval for formal action by the Environmental Health Team Leader (Private Sector Housing) (or Environmental Health Manager or Head of Neighbourhood Support in their absence.)

The decision to refer a case for prosecution, based on the available evidence and professional judgement, shall be left to the Environmental Health Manager in accordance with current practice. The case officer must then consult with the Solicitor to the Council to ensure that the case has been properly considered and is sound.

**FORMAL ENFORCEMENT**

Enforcement action may only be initiated by officers who are authorised to do so.

The Private Sector Housing Team recognises and affirms the importance of achieving and maintaining consistency in its approach to making all decisions, which concern enforcement action, including prosecution. The Council has signed up to and follows the principles of the [Enforcement Concordat](file:///C:\Liveweb53\immpreview.aspx%3fkey=%7bA7D18EAA-9E38-4291-B99B-3C7CF734A4C6%7d&page=4582). It will also ensure that all actions will be consistent with the [Human Rights Act 1998.](https://www.legislation.gov.uk/ukpga/1998/42/contents)

It is our policy to ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards that ensure the public is adequately protected. In coming to any decision many criteria will be taken into account including the seriousness of the offence, the past history of the case, the consequences of non-compliance and the likely effectiveness of the various enforcement options.

Having considered all relevant information and evidence, the choices for action are:

* Take no action
* Take informal action
* Use statutory notices
* Use simple cautions
* Prosecute
* Abatement of the nuisance by direct action
* Injunction

Even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach.

**INFORMAL ENFORCEMENT**

Many persons, having had a problem for which they are responsible drawn to their attention, will be anxious to comply with their statutory obligations. In such cases the enforcement officer's role will be to guide and support. In many cases the first contact with a person complained about or believed to be causing or permitting a problem, will be by advisory letter.

Officers will supply appropriate guidance on legislation, Council procedures and criteria used to assess the extent of the problem either verbally, by letter or by leaflet whenever a complaint is received or a problem is otherwise drawn to the officer's attention.

If written observations, suggestions or requirements are appropriate these will normally be made within 10 working days after a complaint is notified or a meeting takes place. Such written guidance will clearly identify the nature of the complaint or problem and any remedial works that are required. The officer will, with due regard to technical accuracy express requirements or suggestions in a manner that is clear and readily understandable.

Any requirements made verbally or in writing will clearly identify whether they are mandatory or advisory in nature. If the requirements are mandatory, a timescale for compliance will be specified, unless immediate cessation of the noise is required.

Due regard will be had to any special circumstances brought to an officer's attention by the person responsible when a timescale for compliance is specified.

It is appropriate to use informal action in the following circumstances:

* The act or omission is not serious enough to warrant formal action.
* From the individual's/enterprise's history it can be reasonably expected that informal action will achieve compliance.
* Confidence in the individual/enterprise's management involved is high.
* The consequences of non-compliance will not pose a significant risk to public health.

Even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach.

**FORMAL ACTION - NOTICES**

Abatement notices can be effective and quick in that they require problems to be rectified without the potential delays and uncertainty of going to Court. The recipient has the right to appeal to the Magistrates' Court.

In this section enforcement action means serving a notice under [section 80(1) of the Environmental Protection Act 1990](https://www.legislation.gov.uk/ukpga/1990/43/section/80).

In the event of an appeal, the notice may be suspended until the appeal is abandoned or until the outcome of the appeal hearing.

The notice may not be suspended in the event of an appeal if the notice is worded accordingly because, in the opinion of the Council,

* The nuisance is prejudicial to health or likely to be of limited duration such that suspension would render the notice of no practical effect
* The expenditure which would be incurred by any person carrying out works in compliance with the notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

**FORMAL ENFORCEMENT - PROSECUTION**

The Council will generally initiate prosecution where;

* The person served with an abatement notice fails to comply with the requirements of the notice, *and*
* There has been no appeal against the terms of the notice or any appeal made has not been upheld, *and*
* The Council regards prosecution as likely to be a more appropriate and effective remedy than work in default in cases where this would be possible.

In deciding whether to prosecute, the Council will consider

* The gravity of the offence
* The general record and approach of the person responsible
* Whether it is in the best interest of the public to ensure remedial action or to deter others who may fail to comply with notices.
* Whether the evidence available provides a realistic prospect of a conviction
* Whether it would be more efficient use of public funds to simply carry out works in default.

If warranted by the circumstances, the Council will prosecute without additional warnings and without prior recourse to alternative sanctions.

**OTHER ENFORCEMENT POWERS - WORKS IN DEFAULT**

Where the requirements of a notice are not carried out, in many instances the Council is empowered to do whatever is necessary to abate the nuisance and this can also include works in default. The Council will generally carry out work in default when:

* The person served with an abatement notice failed to comply with the requirements of the notice, *and*
* There has been no appeal against the terms of the notice or any appeal made has not been upheld, *and*
* The Council regard work in default as likely to be a more appropriate or effective remedy than prosecution or a successful prosecution has already been taken but the problem remains
* The Council may also, in exceptional circumstances, carry out work in default on behalf of the person responsible where a written request and an undertaking to pay is received from them.

In deciding whether to carry out work in default, the Council will consider:

* The urgency of the need to abate the nuisance.
* The wishes of the person responsible for the problem.
* Whether the evidence available provides a realistic prospect of defending the Council's action in the event that the person responsible contests recovery of costs.

The Council may recover the costs of the work from the person responsible as a civil debt or by placing a charge on the property. Such a charge may be repaid by instalments but will accrue interest at such reasonable rate as the Council may determine.

In carrying out duties, duly authorised officers have a range of far reaching powers, including the right to enter any premises at any reasonable time in order to;

* Ascertain whether or not a breach of legislation exists.
* Carry out any action or works authorised in accordance with these guidelines.

See [Environmental Protection Act 1990 Schedule 3, para 2(1)](http://www.legislation.gov.uk/ukpga/1990/43/schedule/3)

Entry to residential property shall not, except in an emergency, be demanded as of

right unless 24 hours notice has been given.

See [Environmental Protection Act 1990 Schedule 3, para 2(2)](http://www.legislation.gov.uk/ukpga/1990/43/schedule/3)

If entry is refused, an officer may apply to a Justice of the Peace for a Warrant to enter the premises, if necessary, by force.

See [Environmental Protection Act 1990 Schedule 3, para 2(3](http://www.legislation.gov.uk/ukpga/1990/43/schedule/3))

An officer authorised to enter may:

* take with him such other persons and equipment as may be necessary
* carry out such inspections, measurements and tests as he considers necessary
* take away such samples or articles as he considers necessary for that purpose

See [Environmental Protection Act 1990 Schedule 3, para 2(4)](http://www.legislation.gov.uk/ukpga/1990/43/schedule/3)

Before using such powers, an officer will have decided that informal action, in that particular instance

* Would not be appropriate, *or*
* Would be inadequate for the Council to fulfil its duty, *or*
* Would not be successful, *or*
* Has already failed

**OTHER ENFORCEMENT POWERS - SIMPLE CAUTION**

The Statutory Code of Practice on legal matters advises that local authorities should consider issuing a simple caution as an alternative to a prosecution.

[Home Office Circular 30/2005](http://webarchive.nationalarchives.gov.uk/20130126150405/http:/www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2005/030-2005/) states that the purpose of the simple caution is:

* To deal quickly and simply with less serious offenders;
* To divert them from unnecessary appearance in the criminal courts; and
* To reduce the chances of their re-offending

To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered:

* There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction.
* The offender must admit the offence.
* The offender must understand the significance of a caution and give informed consent to being cautioned.

If there is insufficient evidence to consider taking a prosecution, then by implication the conditions are not satisfied for the use of a simple caution. It is also inappropriate to use a simple caution where the suspected offender does not make a clear and reliable admission of the offence. There is no legal obligation for any person to accept the offer of a simple caution and therefore no pressure will be applied to the person to accept a caution.

Simple cautions shall be used in accordance with the Home Office Circular and relevant LACORS guidance. The Environmental Health Manager is designated the "cautioning officer" to issue simple cautions.

Where a person declines the offer of a simple caution, it will be necessary to consider taking alternative enforcement action. Whilst this will probably mean taking a prosecution, this is not inevitable. For example, it may be felt that a written warning would be appropriate.

Where a simple caution is to be given other relevant bodies will be advised. These bodies may include home and originating authorities. Reference shall be made to any detailed advice offered by LACORS, particularly any guidance issued on LACORS Home Authority Principle.

**OTHER ENFORCEMENT POWERS - INJUNCTION**

Where the risk to public health is greatest and/or the delay that would occur in taking the case for prosecution would allow an unacceptable continuation of the breach, the Council may decide to seek an injunction. In cases of such seriousness, it must be approved by the Environmental Health Manager prior to being referred to the legal department.

**TRAINING AND QUALIFICATIONS OF ENFORCEMENT OFFICERS**

No officer will carry out enforcement duties unless suitably trained and experienced and authorised by Havant Borough Council / East Hampshire District Council. Only officers specifically authorised for that purpose, being officers having relevant qualifications, training and experience will sign abatement notices.

Prior to the service of any kind of notice which, directly or indirectly would cause a business to cease trading, the matter must be reviewed by the Environmental Health Manager and the Solicitor to the Council. Prosecution will only be instigated following review of the matter by the Environmental Health Manager and the Solicitor to the Council. Training will be provided for all enforcement officers as required to meet changes in legislation and enforcement procedures.

**REVIEW OF GUIDELINES**

The implications and effectiveness of these guidelines will be monitored and reviewed as necessary.

Latest review: September 2024

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