



Pendle Borough Council

Environmental Health

Enforcement Policy

November 2021

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1.Introduction

1.1 Purpose

Pendle Borough Council is required by the Legislative and Regulatory Reform Act 2006 and subsequent Regulators' Code to publish a policy setting out its approach to compliance and enforcement. It is important for regulators, in meeting their responsibility under the statutory principles of good regulation, to be accountable, open, fair and transparent about their activities.

The Council aims to support businesses in achieving compliance and encouraging economic growth. The outcomes of this will be safer and cleaner environment for all within the district, with a more vibrant and sustainable community.

Pendle Borough Council's Environmental Health Team (EHT) enforces over 100 pieces of legislation related to both businesses and individuals.

The main areas of enforcement are:

- ☐ Food Safety
- ☐ Health and Safety
- ☐ Premises and Personal Licensing
- ☐ Environmental Protection
- ☐ Pollution Control
- ☐ Caravan Site Licensing
- ☐ Environmental Crime
- ☐ Private Sector
- ☐ Housing

1.2 Aims of the Compliance and Enforcement Policy

The functions undertaken by the Council's EHT assist the Council in achieving its priorities. It strives to accomplish these by undertaking its duties in a fair and equitable manner by requiring individuals, businesses and organisations to fulfil their legal responsibilities. The policy includes what factors are taken into account, what individuals and businesses can expect from us and what efforts will be made to ensure that everyone receives fair and equal treatment, based on reducing the risk to both public and individual health, safety and well-being.

By enforcing the legislation available the EHT supports the following corporate objectives;

- ☐ Working with Partners and the Community to Sustain Services of Good Value
- ☐ Help to Create and Sustain Jobs with Strong Economic and Housing Growth
- ☐ Helping to Create and Sustain Resilient Communities

1.3 Scope of the Environmental Health Service

The Environmental Health Team is committed to ensuring that legislation is enforced fairly and consistently to ensure that one member of the community cannot enjoy an unfair competitive advantage over the rest of the community by illegal activities or biased enforcement activities.

The effectiveness of legislation in protecting residents depends on the compliance of those regulated. We will take care to offer assistance to meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who disregard their obligations under the law or act irresponsibly putting residents' health at risk.

1.4 Joint Working

The EHT will normally take action consistent with the approach that other local authorities would use. When the EHT is taking enforcement action contrary to the advice of the Home, Originating or Lead Authority, the authorised officer will discuss the action with the relevant Authority before finalising an enforcement approach.

Where a Primary Authority has been established under the provisions of the Regulatory Enforcement and Sanctions Act 2008, the Officer will consult and cooperate with the Primary Authority where appropriate.

Pendle Borough Council will also cooperate and work with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement, for example the Police and Fire Service, Environment Agency, other local authorities and statutory undertakers.

The EHT will work with our internal and external partners to achieve compliance with legislation so that resources are pooled which adds value for the customer.

In particular we will work closely with other agencies dealing with the wider aspects of Anti-Social Behaviour. To that end the service will share data with the Police provided that the customer has agreed.

2. Competence of Enforcement Officers

The Council recognises that only appropriately competent, authorised personnel may undertake certain aspects of environmental health and licensing law enforcement. The Council's constitution provides for such authorisation of officers through its published scheme of delegation.

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

Competency of officers will be maintained through appropriate continuing professional development.

3. Comparing with Others

The Council is committed to comparing its services with those of others and in particular with better performing authorities. To achieve this, the Council will take part in benchmarking (including Inter Authority Auditing) where it is believed the resources needed to do this will be justified by the improvements which are secured as a result.

4. Charging for Enforcement Action

Some legislation, such as the Housing Act 2004 gives Local Authorities the power to make a charge if enforcement action is necessary. The service will make use of these powers and will make a charge to ensure that where the legislation allows, the Council recovers the full costs of enforcement. Where possible fees will be set and reviewed as part of the fees and charges review process.

5. Equality

The Council fully recognises and endorses the rights of individuals and will ensure that all enforcement action occurs in strict accordance with the Police and Criminal Evidence Act 1984, the Human Rights Act 1984, the Regulation of Investigatory Powers Act 2000 and other relevant legislation and guidance.

Action taken against an individual, business or organisation will be consistent with the Council's commitment to equality and diversity when taking a decision to take enforcement action, the Council aims to ensure that there is no discrimination against an individual with protected characteristics.

We recognises that some individuals need additional support or information in different formats to provide equal access to our service. Where the proprietor of a business does not speak or read English, they will be encouraged to arrange their own translations. If this is not possible then the Council will provide this service.

Mental capacity issues are assessed in each case to ensure that the individual the Council is taking enforcement action against understands the consequences of their actions and is able to make informed decisions.

6. Conduct of Investigations

All investigations will be carried out in accordance with any associated guidance or codes of practice, in so far as they relate to Pendle Borough Council.

Covert surveillance will form part of some investigations. If for any reason the service needs to carry out any covert surveillance, the relevant guidance will be followed.

Covert surveillance may be used as a last resort and where this is the case the relevant guidance will be followed.

7. Principles of Enforcement

The main principles of enforcement detailed below are contained in the Enforcement Concordat which Pendle Borough Council adopted in 2000.

☐ Openness

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. The Service will be open about how we carry out our work including any charges we set. We will discuss general issues, specific compliance factors or problems with anyone experiencing difficulties

☐ Helpfulness

We will provide a courteous and efficient service and staff in the service area will identify themselves by name. We will provide a contact point and telephone number for future dealings with the service and will encourage all those who have dealings with us to seek advice/information from us. We will also signpost customers to relevant services where appropriate.

☐ Proportionality

We will ensure that any action required is proportionate to the risks. Where the law allows, when considering what action to take we will take account of the circumstances of the case and the attitude of the individual.

8. Regulators Compliance Code

The Legislative and Regulatory Reform Act 2006 set out the approach regulators should take when carrying out their enforcement functions. The purpose of the legislation is to remove unnecessary burdens from businesses. These burdens are described as;

- (a) A financial cost;
- (b) An administrative inconvenience;
- (c) An obstacle to efficiency, productivity or profitability; or
- (d) A sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

This legislation also enabled Ministers to develop regulations, and Codes of Practice which Local Authorities are required to follow when taking enforcement decisions. The Regulator can deviate from the Code of Practice if they conclude, on the basis of material evidence, that following the code would not be best option. The decision should be documented.

In 2012 a revised code was published by the Better Regulation Delivery Office. This *Regulators Code* provides a flexible, principles based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated bodies. The main principles are;

- a) Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
- b) Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
- c) Regulators should base their regulatory activities on risk.
- d) Regulators should share information about compliance and risk.
- e) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
- f) Regulators should ensure that their approach to their regulatory activities is transparent. The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases.

The Code sets out two tests:

Evidential Test - is there enough evidence against the defendant?

Public Interest Test - is it in the public interest for the case to be brought to court?

Authorised officers must seek to ensure compliance with legislation. Officers will offer information, advice and support where necessary. However, they may also use formal enforcement options to ensure compliance.

The Environmental Health Team will seek to ensure that enforcement decisions are consistent, fair, balanced and proportionate, but that actions taken by the service are flexible enough to support economic growth.

In making a decision as to the most appropriate action to take the following should be considered:

- ☐ The nature of the alleged offence.
- ☐ The seriousness of the alleged offence(s) or conditions.
- ☐ The risk posed to the public, employees, welfare of animals or the environment.
- ☐ The individual or business's previous history and confidence in management (where appropriate).
- ☐ The requirement of the legislation.
- ☐ The consequences of not complying.
- ☐ The likelihood of effectiveness of the various enforcement options.
- ☐ Likelihood of a due diligence defence (where appropriate).
- ☐ Relevant information provided by the home/primary authority for the business, where appropriate.
- ☐ Cooperation of witnesses (where appropriate).
- ☐ Willingness to prevent a recurrence.
- ☐ Public benefit.
- ☐ Any explanation offered.
- ☐ Whether a caution is appropriate (Home Office Circular 16/2008).
- ☐ The effect on the environment of the alleged offence, where appropriate.

9. General Enforcement Options

The Council recognises the following enforcement options;

- I.** Informal Action
- II.** Written Warnings
- III.** Statutory Notices
- IV.** Simple Cautions
- V.** Prosecution
- VI.** Work in default
- VII.** Fixed Penalty Notices
- VIII.** Seizure of equipment
- IX.** Forfeiture Proceedings
- X.** Licence Reviews
- XI.** Refusal, Suspension and Revocation of Licence

9.1 Informal Action

The purpose of informal action is to help businesses and an individual comply with legislation and is taken at the discretion of an Authorised Officer. Informal action can be through advice, information or education and can be verbal or written. This

action would also include an inspection report

Informal action should be considered when any of the following applies –

- a) The contravention is not serious enough to warrant formal action.
- b) The risk of non-compliance is low.
- c) There is a previous history of compliance.
- d) Confidence in the organisation or individual is high.

9.1.1 Voluntary Undertakings

Pendle Borough Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

9.2 Written Warnings

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

Written warnings will include clear statements that:

- ☐ The Council believes or has evidence that an offence has been committed.
- ☐ No action is to be taken by the Authority if the matter is rectified within the time specified.
- ☐ Legal proceedings could result if the matter is not rectified or the offence occurs again.
- ☐ A written warning will also state what must be done to put right the alleged offence and or details of the situation that should be rectified.

9.3 Statutory Notices

An enforcement option under many Environmental Health and housing legislation is to serve a statutory notice. Statutory notices can require businesses or individuals to;

- ☐ Stop a process
- ☐ Stop using equipment
- ☐ Close the premises
- ☐ Carry out remedial work
- ☐ Carry out tests
- ☐ Stop causing a nuisance.

There are specific rules and appeal periods for different legislation but the following general rules will apply:

- a) A statutory notice will be issued when one or more of the following apply:

- ☐ There are significant contraventions of environmental health or housing legislation.
 - ☐ We are not confident that the person or business will respond to an informal approach.
 - ☐ There is a history of non-compliance.
- ☐ Standards are generally poor and the management has little awareness of requirements.
 - ☐ The consequences of non-compliance could be potentially serious to public health.
 - ☐ Effective action needs to be taken as quickly as possible to remedy conditions that are serious and deteriorating.
 - ☐ Where the legislation states that a Notice must be served.
- b)** Statutory notices will relate to the risk to health, safety and public protection and will not be issued for minor, technical contraventions, unless an informal approach is unlikely to achieve compliance.
 - c)** Statutory notices will be issued only by officers who have been authorised to do so.
 - d)** Where the legislation stipulates statutory notices will be signed only by an authorised officer who has personally witnessed the contravention.
 - e)** Authorised Officers will follow any relevant Codes of Practice and guidance on the use of statutory notices.
 - f)** Authorised Officers will place realistic time limits on statutory notices. Where possible, these will be agreed with the person or business concerned, although the final decision will rest with the officer.
 - g)** The Authorised Officer will discuss with the person or representative of the business the works that will be specified in the Notice, and will explain fully the options which are available.
 - h)** Failure to comply with a statutory notice will, in general, result in court proceedings.
 - i)** Other bodies will be notified of any formal action taken, where it is considered appropriate to do so. Where appropriate, notification will include the outcome of any action.

9.4 Simple Caution

The purpose of a simple caution is to offer an alternative to prosecution that will:

- ☐ deal quickly and simply with less serious offences
- ☐ divert such cases from unnecessary appearances in the criminal court
- ☐ reduce the chances of re-offending

The Council recognises that issuing a simple caution is legislative action in its own right and will not be used as an easy option to prosecution, but as a genuine option

to achieve the above aims.

A simple caution will be issued when the circumstances of the offence meet the criteria identified in the Home Office circular 30/2005: Cautioning of Adult Offender, or any circular that replaces it.

The Council aims to ensure that all the following conditions are met before a simple caution is administered;

- ☐ There is sufficient evidence to give a realistic prospect of prosecution
- ☐ The alleged offender admits the offence
- ☐ The alleged offender understands the significance of a Simple Caution
- ☐ The alleged offender gives formal consent to being cautioned.

9.5 Prosecution

The Council has the discretion whether or not to prosecute for an offence and the decision to prosecute is not taken lightly and is based on the circumstances of each case laid out in the policy below.

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

- a)** There is a flagrant breach of law such that the occupants or the public health, safety or wellbeing is put at risk, or there is a serious offence under environmental health legislation.
- b)** The offender has failed to accept a formal caution.
- c)** A failure by the offender to correct an identified serious potential risk to safety after having been given a reasonable opportunity to do so.
- d)** 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.
- e)** A failure to comply in full or part with a statutory notice, licensing or registration.
- f)** There is a history of similar offences.
- g)** A formal caution has previously been issued for a similar offence.

Additionally, due regard must be given to guidance and advice from Government Departments, Advisory Bodies, Local Authority Associations and Professional and or Technical Bodies.

Before a prosecution proceeds, the appropriate officer will be satisfied that the case is in the public interest and is supported by sufficient relevant evidence which is:-

- a) Admissible
- b) Substantial
- c) Reliable

The guidance contained in the Crown Prosecution Code of Practice will be followed and all the following factors taken into account:

- a) The seriousness of the alleged offence.
- b) The previous history of the party concerned.
- c) The likelihood that a defence can be established.
- d) Whether important witnesses are willing and able to co-operate.
- e) Willingness of the party to prevent the problem recurring.
- f) Whether prosecution would be of public benefit.
- g) Whether a formal caution might be more appropriate.
- h) Any explanation offered by the party concerned
- i) The victim's views.

The decision to institute legal proceedings does not preclude the issue of statutory notices or other enforcement action as well.

Investigation and decision-making will not be unduly prolonged or delayed. It will be in accordance with principles laid out in the:

- ☐ Human Rights Act 1998
- ☐ Police and Criminal Evidence Act 1984
- ☐ Regulation of Investigatory Powers Act 2000

The Environmental Health Team will keep witnesses, complainants or other parties informed as to the progress of the case.

9.5.1 Publicity

In 2011 the Government updated its guidance Publicising Sentencing Outcomes. This document states that;

- ☐ Verdicts and sentences in criminal cases are given out in open court and are a matter of public record.
- ☐ There should be a presumption in favour of the police, local authorities and other relevant criminal justice agencies publicising outcomes of criminal cases and basic personal information about convicted offenders so as to:
 - ☐ reassure the public;
 - ☐ increase trust and confidence in the Criminal Justice System (CJS);
 - ☐ improve the effectiveness of the CJS;
 - ☐ discourage offending and/or re-offending.

The Health and Safety Executive (HSE) requires enforcing authorities in England and Wales to make arrangements for the publication annually of the names of all the

companies and individuals who have been convicted in the previous 12 months of breaking health and safety law. They should also have arrangements for making publicly available information on these convictions and on improvement and prohibition notices, which have been issued.

9.5.2 Proceeds of Crime

The Council either through its own officers or in co-operation with the Police may make an application under the Proceeds of Crime Act 2002 to restrain or confiscate the assets of the offender. The purpose of any such actions would be to recover any financial benefit that the offender has obtained from his criminal conduct.

9.6 Work in Default

The local authority has the discretion whether or not to carry out work if a statutory notice has not been complied with. Non-compliance with a notice will not automatically result in the instigation of works in default. If it becomes necessary to carry out default work consideration should always be given to whether a prosecution is appropriate in addition to or as well as carrying out the work.

The decision is not taken lightly and is based on the circumstances of each case. The circumstances, which are likely to warrant works in default may be characterised by one or more of the following criteria:

- a) The conditions are such that the occupants or the public health, safety or well being is put at risk
- b) The person responsible either cannot be found or has not responded to requests to contact the EHT.
- c) A failure by the offender to correct an identified serious potential risk to safety after having been given a reasonable opportunity to do so.

Work in default work will be subject to the approval of a Manager with authority to spend up to the estimated costs of the work. It is the Council's duty to spend public money in a responsible way and to recover any costs. Depending on the legislation a local land charge will be applied and/or an invoice raised for the full costs including officer time and other relevant expenses.

9.7 Fixed Penalty Notices

Some legislation allows local authorities to offer a Fixed Penalty Notice (FPN) as a way of discharging their liability for the offence.

In circumstances where a person or body corporate fails to accept or pay a FPN, we will consider an escalation of enforcement action, in order to maintain the integrity of these legislative regimes.

9.8 Forfeiture Proceedings

This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them being used to cause a further problem. In appropriate circumstances, an application for forfeiture to the Magistrates Courts will be made.

9.9 Seizure of goods/equipment

Certain legislation enables authorised officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, or any goods that may be required as evidence for possible future court proceedings. An appropriate receipt will be issued when goods are seized.

9.10 Refusal, Suspension and Revocation of Licences and Permits

Where there is a requirement for a business to be licensed by the local authority, the licence may be granted unless representations or objections are received against the application.

Some legislation requires any appeals or representations to be heard at the Licensing Committee or sub committee. The Committee can decide to grant, grant with conditions, or refuse the licence application.

Where the Licensing Committee does not form part of the licensing process, an applicant can use the complaints procedure to have the decision looked at again.

Licences and permits may be suspended or revoked with immediate effect if such a decision is deemed necessary in the interests of public safety and/or animal welfare.

10.Enforcement in relation to specific legislation

10.1 Food Safety Enforcement

Pendle Borough Council has responsibility for enforcement of food legislation and carries out its food enforcement activities with regard to the provisions of the Food Law Code of Practice England 2015 and any subsequent revisions.

The Food Standards Agency produces guidance in relation to specific food hygiene risks such as E.Coli guidance, which was produced in response to the serious outbreaks of E.Coli O157 in Scotland in 1996, and Wales in 2005.

10.1.1 Hygiene Improvement Notices

These may be appropriate in any of the following circumstances or a combination thereof:

- ☐ formal action is proportionate to the risk to public health;
 - ☐ there is a record of non compliance with breaches of the food hygiene regulations;
- and**
- ☐ the authorised officer has reason to believe that an informal approach will not be successful.

The officer who signs the notice must have witnessed the contravention and be satisfied that it constitutes a breach of the relevant legislation

The Hygiene Improvement Notice procedure would be inappropriate in the following circumstances:

- ☐ where the contravention might be continuing, for example personal cleanliness of staff, and a notice would only secure an improvement at one point in time;
- ☐ intransient situations, and it is considered that swift enforcement action is needed, for example, a one day festival or sporting event (a Hygiene Emergency Prohibition Notice would be the only formal remedy which would have immediate effect;
- ☐ where there is a breach of good hygiene practice but no failure to comply with an appropriate regulation.

10.1.2 Hygiene Emergency Prohibition Notices

Unless the use of Voluntary Procedures is more appropriate in the, circumstances, Hygiene Emergency Prohibition Procedures should be used if an authorised officer has evidence that the health risk condition is fulfilled. The health risk condition is fulfilled if there is an imminent risk of injury to health.

If the appropriate evidence is found, a Hygiene Emergency Prohibition Notice may be served on the food business operator, followed by an application to a Magistrates Court for a Hygiene Emergency Prohibition Order.

In recognition that conditions are so serious that they warrant prohibition proceedings the service will always consider if it is appropriate to prosecute the offender when using prohibition procedures.

10.1.3 Voluntary Procedures (food hygiene)

Voluntary Procedures to remove a health risk condition may be used, at the instigation of the food business operator, when the food business operator agrees that a health risk condition exists i.e. there is an imminent risk of injury to health. An officer may suggest this option to the food business operator.

10.1.4 Alternative Enforcement Strategies

Alternative enforcement strategies are methods by which low risk (hygiene category E and standards category C in accordance with the Food Law Code of Practice risk rating mechanism) establishments are monitored to ensure their continued compliance with food law.

10.1.5 Pre Notification of Inspection

The general principle for official control inspections is that they shall be carried out without prior warning.

10.2 Health and Safety Enforcement

Pendle Borough Council has responsibility for enforcement of health and safety legislation and carries out its health and safety enforcement activities with regard to the provisions of the Making a Difference – the Standard for Health and Safety Enforcing Authorities (Health and Safety Executive, 2008).

Businesses are rated according to risk and only A rated businesses are inspected routinely. The majority of enforcement interventions for health and safety relate to accident investigations and proactive project work.

HSE guidance will be used to determine the course of action following the discovery of contraventions.

10.3 Private Sector Housing Enforcement

Pendle Borough Council is committed to ensuring that all persons living in the Borough are housed in dwellings that meet the standards set down in legislation.

The action the Council chooses to take must be the most appropriate course of action in relation to the hazard.

The legislation allows Councils to tailor their enforcement action to meet specific Council priorities. Pendle Borough Council has taken into account wider housing strategies of the Council and will therefore take action where category 1 or 2 hazards exist. This action may contribute to crime reduction targets and reducing fuel poverty.

The various enforcement options in relation to housing are detailed below.

☐ Improvement Notices (Category 1 & 2 hazards)

An improvement notice under section 11 or 12 Housing Act 2004 may be served in response to a category 1 or category 2 hazard.

An improvement notice must specify the nature of the hazard, the deficiency giving rise to the hazard the nature of the remedial action, and a time in which to do the necessary work. The notice must also contain information about the right to appeal.

Should the notice not be complied with, the Council can carry out the works in default and recharge the person upon whom it was served. Not complying with a notice is a criminal offence and the Council is able to prosecute the person who received the notice if he failed to comply with it.

☐ Prohibition Order (Category 1 & 2 hazards)

The Order may prohibit the use of part or all of the premises, for some or all purposes, or occupation by particular numbers or descriptions of people.

A prohibition order must specify the nature of the hazard, the deficiency giving rise to the hazard, the premises or part of the premises to which prohibitions are imposed and any remedial action that would result in the order being revoked.

The order must also contain information about the right to appeal.

Using premises or permitting premises to be used, knowing that a Prohibition Order has become operative is a criminal offence and the Council is able to prosecute for non-compliance.

☐ Emergency Remedial Action (Category 1 hazards)

The Council has the discretion to take emergency remedial action against category 1 hazards which present an imminent risk of serious harm to the

occupier. The action will consist of whatever remedial action the Council considers necessary to remove an imminent risk or serious harm. Attempts will always be made to contact the responsible person prior to carrying out any such emergency works, but the risk to the health and safety of the affected person or persons will be the overriding concern of the council in such a case.

The Council must serve a notice of emergency remedial action within seven days of taking action. The notice must specify the nature of the hazard, the deficiency giving rise to the hazard and the date when the action was or is to be started. The notice must also contain information about the right to appeal.

☐ **Emergency Prohibition Order to deal with premises affected by category 1 hazards**

The Council has the discretion to make an emergency prohibition order for category 1 hazards which present an imminent risk of serious harm to the occupier/s. The order may prohibit the use of all or any part of a premises with immediate effect.

Attempts will always be made to contact the responsible person prior to prohibiting the use of any dwellings in this way, but the risk to the health and safety of the affected person or persons will be the overriding concern of the council in such a case.

The Order must specify the nature of the hazard and any remedial action which would result in the order being revoked. The order must also contain information about the right to appeal.

☐ **Hazard Awareness Notice (Category 1 & 2 Hazards)**

In certain circumstances the Council may determine that advisory action is only needed in respect of a hazard, and may serve a hazard awareness notice.

A hazard awareness notice must specify the nature of the hazard, the deficiency giving rise to the hazard and details of any remedial action which the Council considers would be practicable and appropriate to take.

This procedure does not require further action by the person served with the notice and therefore there is no appeal provision.

A Hazard Awareness Notice is not declared on Local Land Charges so a new purchaser may be unaware of the hazard.

☐ **Demolition Orders to deal with premises affected by category 1 hazards**

Demolition orders are available under part 9 of the Housing Act 1985 as amended as a possible response to a category 1 hazard. A demolition order requires the property to be vacated within a specified time and subsequently demolished. It is a criminal offence to allow a premises to be occupied after a demolition order has come into effect. Should the building not be demolished the Council may demolish it and recharge the person upon whom the notice was served.

☐ **Clearance Areas to deal with premises affected by category 1 hazards**

A clearance area is an area to be cleared of all buildings. A clearance area under Part 9 of the Housing Act 1985 can be declared if the Council is satisfied that each of the residential buildings in the area contains one or more category 1 hazards (or that the buildings are dangerous or harmful to the health or safety of the occupiers as a result of their bad arrangement or the narrowness or bad arrangement of the streets) and any other buildings in the area are dangerous or harmful to the inhabitants. The Council is required to consult on the declaration of a clearance area and publish its intentions.

10.3.1 Houses in Multiple Occupation (HMOs)

In addition to the enforcement options above the Council has further powers to ensure adequate standards in HMOs are met and maintained. The Housing Act 2004 introduced a mandatory scheme to licence certain HMOs. Mandatory Licensing applies to larger high risk HMOs of 3 or more stories occupied by 5 or more people, comprising 2 or more households.

The mandatory HMO licensing regime provides procedures to assess the fitness of a person to be a licence holder, potential management arrangements of the premises and suitability of the property for the number of occupants, including the provision of relevant and adequate equipment and facilities at the property.

It is a criminal offence if a person controlling or managing a HMO does not have the required license or if they breach any license conditions.

In addition to the action taken as part of the Housing, Health and Safety Rating Scheme (HHSRS) there are other options available when dealing with HMOs;

☐ Interim Management Orders (IMO):

The Council must make an IMO in respect of a licensable HMO which is not licensed if it is satisfied that there is no reasonable prospect of the property being licensed in the near future.

An IMO is in force for 12 months and allows the Council to manage the property with all the rights of a landlord and to collect rent and expend it on work to the property. The Council may delegate the management of the HMO to another organisation. An IMO ceases to have effect if a licence is granted. There are provisions to vary, revoke and appeal against an IMO.

☐ Final Management Order (FMO):

The Council must make FMO where, on expiry of an IMO, the property requires to be licensed but the Council considers it is still unable to grant a licence.

An FMO is similar to an IMO in that the Council continues to manage the property with all the rights of the landlord, but they must be reviewed from time to time. The Council may delegate the Management of the HMO to another organisation. As with IMOs, there are provisions for varying, revoking and appealing the making of a FMO.

☐ Management Regulations:

Management Regulations made under the Housing Act 2004 impose duties on

landlords and managers of all HMOs (whether or not subject to licensing). There are no notice serving powers under the Management Regulations but the Council can prosecute for breach of the regulations.

❏ **Overcrowding notices:**

apply to HMOs that are not required to be licensed. The effect of an overcrowding notice is that the person served must comply with the terms of the notice and if they fail to do so they commit an offence for which the Council can prosecute. An overcrowding notice may either prohibit new residents or limit the number of people sleeping in the HMO, or both of these requirements on the same notice.

Overcrowding in non-HMOs are dealt with under the Housing Health & Safety Rating System (HHSRS) and Housing Act 2004 Notices as detailed above

10.3.2 Empty Properties Enforcement

It is a priority of this Council to bring properties that have been empty for 1 year or more back into occupation.

There are several options available to officers to deal with long-term empty properties and these are detailed below.

❏ **Enforced Sale:**

If the council is owed money following non payment of Council tax, or where the council has needed to take action due to the condition of the property and the legislation allows us to recover the costs it will consider forcing the sale of the property in order to recover its costs. The trigger for an enforced sale will be £3,000 outstanding debt.

❏ **Empty Dwelling Management Orders:**

The Housing Act 2004 introduces Empty Dwelling Management Orders (EDMO) in order to unlock the potential of empty houses and to get them back into use as houses as quickly as possible. EDMOs are designed as a backup to voluntary leasing arrangements and an alternative to enforcement action under other legislation.

❏ There are two types of order, Interim EDMO and Final EDMO. An EDMO allows the Council to secure the occupation and proper management of privately owned houses and flats that have been unoccupied for a specified period (at least six months).

❏ **Interim EDMOs;**

In order to make an interim EDMO the Council must apply for authorisation from the Residential Property Tribunal (RPT). The property must have been empty for at least six months and there must be a reasonable prospect that the property will become occupied if an interim EDMO is made.

An Interim EDMO comes into force as soon as it has been authorised and can last for 12 months. Once an Interim EDMO is in force the Council must take steps to

secure occupation and proper management of the property. However the Council may only grant a tenancy with the consent of the owner.

□ **Final EDMO:**

The Council may make a Final EDMO to replace an interim EDMO or a previous Final EDMO if the Council considers the property would otherwise remain unoccupied. The Council does not need to obtain authorisation from the RPT to make a Final EDMO. Once a Final EDMO is in force the Council must review its operation and take steps to secure occupation of the dwelling.

- Subject to any appeal, a Final EDMO comes into force no earlier than the day after the period for appealing has expired and last for the period specified in that order.

□ **Compulsory Purchase:**

This option is available if the property owner has not responded to informal approaches and Compulsory Purchase is the best course of action. This is likely to be where the condition of the property is such that it affects the local amenity of the area. Due to the cost to Pendle Council these will only rarely be pursued.

- **Improvement Notices:** Empty properties can also be assessed under HHSRS. However because there are no occupiers immediately affected by the conditions of the property this legislation will only be used where it is deemed to be the best course of action and where other legislation is not appropriate.

10.3.3 Electrical Safety Enforcement

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, introduced new requirements for electrical safety in the private rented sector. The various enforcement options in relation to this are detailed below.

- **Regulation 4:** The Council has a duty to serve a Remedial Notice within 21 days for the following breaches of duty by a landlord:
 - Failure to supply a copy of an electrical safety Certificate within 7 days of the Council requesting it
 - Failure to complete works determined by an Electrical Safety Report within 28 days.
- **Regulation 6:** The Council may carry out works in default following the service and non-compliance of a remedial Notice.
- **Regulation 11:** The Council may issue a financial penalty to a landlord where a landlord has breached a duty. The financial penalty will be determined in accordance with the Civil Penalties Policy and Matrix.

10.4 Statutory Nuisance Enforcement

10.4.1 Proactive Inspections

Whilst much statutory nuisance work will involve responding to complaints from the

public, the Council also has an important responsibility to carry out pro-active regulation to protect the amenity of residents. In particular, we will carry out proactive inspections, and take all necessary actions in the following circumstances:

- a) To control the emission of dusts, smoke, odour or effluvia where there is a very high likelihood of nuisance occurring.
- b) To control potential nuisance from planned events, specific operations or activities, with a potential to cause significant disturbance.
- c) To assist the Planning Department in assessing, and controlling, the impact of potential statutory nuisance from, or affecting, proposed developments.

10.4.2 Abatement Notices

The Council has a duty to investigate complaints related to statutory nuisance and to serve an Abatement Notice if a nuisance exists. Officers who witness the nuisance should serve the notice. It is an offence not to comply with an Abatement Notice without a reasonable excuse.

The majority of statutory nuisance service requests relate to individuals and are usually due to the behaviour of a neighbour for example playing music too loud. These requests for service can be due to a clash of lifestyles or a consequence of a long-standing neighbour dispute. It is expected that the complainant/s will be willing to give evidence in court if necessary unless there are extenuating circumstances.

Where the complaint relates to wider anti-social behaviour, we will ask the customer if they wish for their case to be dealt with by the Anti-Social Behaviour (ASB) team who have experience in dealing with these types of issues. Mediation will be offered as an alternative to taking formal action where appropriate.

Where the EHT considers that we have either resolved or not been able to substantiate the nuisance after visiting or monitoring 3 times when the nuisance is most likely to be occurring we will close the investigation.

We will not re-open such cases unless we are satisfied that circumstances have changed significantly.

10.4.3 Defences

Commercial businesses have a statutory defence if they can show that they have used the best practicable means available without incurring excessive costs to abate the nuisance.

10.5 Licensing Enforcement

Housing Health and Economic Development currently enforce licensing for the following activities:

- Private sector Housing

- Caravan sites

10.5.1 Hearings and Review

In some circumstances where licence holders have for example:

- ☐ Been convicted of a relevant offence;
- ☐ Refused to comply with a condition of the licence;
- ☐ Behaved in a way which may render that person as unsuitable to hold a licence;
- ☐ Behaved in a way which is likely to have put the public at risk
- ☐ Circumstances that appear to breach the licensing objectives of the relevant Act

The offender will be reported and the licence will be reviewed to determine the most appropriate course of action. This may be the immediate revocation, suspension or variation of a licence.

Where offenders are reported for consideration of formal action we will:

- ☐ give sufficient notice of the date the matter is to be considered;
 - ☐ give notice to the licence holder of the charges against them;
 - ☐ give notice to the relevant authorities and interested parties;
 - ☐ provide the opportunity for the licence holder to be represented;
 - ☐ provide the licence holder with the opportunity to present their case and provide supporting evidence;
 - ☐ ensure the matter is determined in an impartial manner in accordance with the rules of natural justice.
- provide written notice of the decision with reason.

11.Complaints of non-compliance

Where the EHT receive complaints of non-compliance, the Council will review the quantity and quality of the intelligence received, and determine the most appropriate cause of action. Consideration will be given to:

- ☐ the relevant legislation
- ☐ the nature and seriousness of the alleged offence(s).
- ☐ the enforcement options outlined in this policy.
- ☐ any information gained from internal or external partner organisations.

Where enforcement action is not taken, then the complainant will be told that this is the case and given an explanation of the reasoning behind such a decision.

12.Review

This policy will be reviewed every three years to ensure that it stays relevant to current guidance.

13. Comments and Complaints

If you wish to make a comment or raise an issue regarding enforcement or the enforcement policy itself, please contact the Environmental Health Manager at Pendle Borough Council.

List of Appendices

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Appendix A: Legislation, Guidance and Codes that Influence the Preparation of the Compliance and Enforcement Policy

A. Principles of Good Regulation

The [Legislative and Regulatory Reform Act 2006](#), Part 2, requires Pendle Borough Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function¹. For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services.

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

B. Regulators Compliance Code (BERR, 2007)

Pendle Borough Council has had regard to the [Regulators Compliance Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

C. Enforcement Concordat (Cabinet Office, 1998)

Pendle Borough Council has adopted the Enforcement Concordat and the Principles of Good Enforcement: Standards; Openness; Helpfulness; Complaints; Proportionality and Consistency.

D. Human Rights Act 1998

Pendle Borough Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

1. Specified by the [Legislative and Regulatory Reform \(Regulatory Functions\) Order 2007](#)

E. Data Protection Act 1998

Where there is a need for Pendle Borough Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

F. The Code for Crown Prosecutors

When deciding whether to prosecute Pendle Borough Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions. The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, Pendle Borough Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

b. Public Interest Test - is it in the public interest for the case to be brought to court?

Pendle Borough Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available.

G. Food Law Code of Practice

Pendle Borough Council has responsibility for enforcement of food legislation and carries out its food enforcement activities with regard to the provisions of the [Food Law Code of Practice](#) (Food Standards Agency, 2015 or subsequent revisions).

H. Standard for Health and Safety Enforcing Authorities

Pendle Borough Council has responsibility for enforcement of health and safety legislation and carries out its health and safety enforcement activities with regard to the provisions of the Making a Difference – the Standard for Health and Safety Enforcing Authorities (Health and Safety Executive, 2008).

I. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The [Regulatory Enforcement and Sanctions Act 2008](#) established the [Local Better Regulation Office](#) (LBRO), which produces guidance for local authority regulatory services. We are committed to following guidance produced by LBRO and will have regard to any list of enforcement priorities published by LBRO.

The Act also established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a registered Primary Authority partnership

Appendix B: Conduct of Investigations

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Pendle Borough Council:

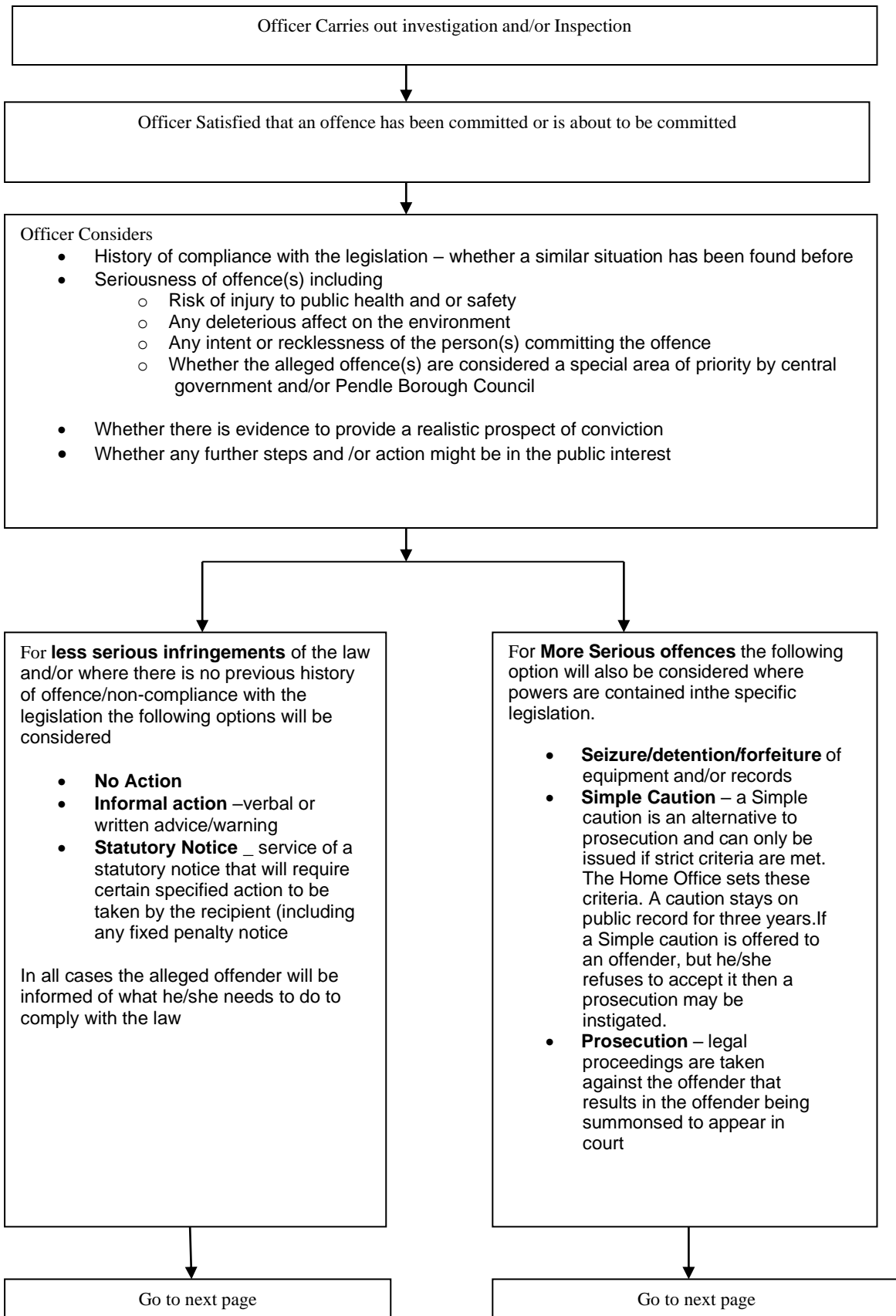
- ☐ the [Police and Criminal Evidence Act 1984](#)
- ☐ the [Criminal Procedure and Investigations Act 1996](#)
- ☐ the [Regulation of Investigatory Powers Act 2000](#)
- ☐ the [Criminal Justice and Police Act 2001](#)
- ☐ the [Human Rights Act 1998](#)

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

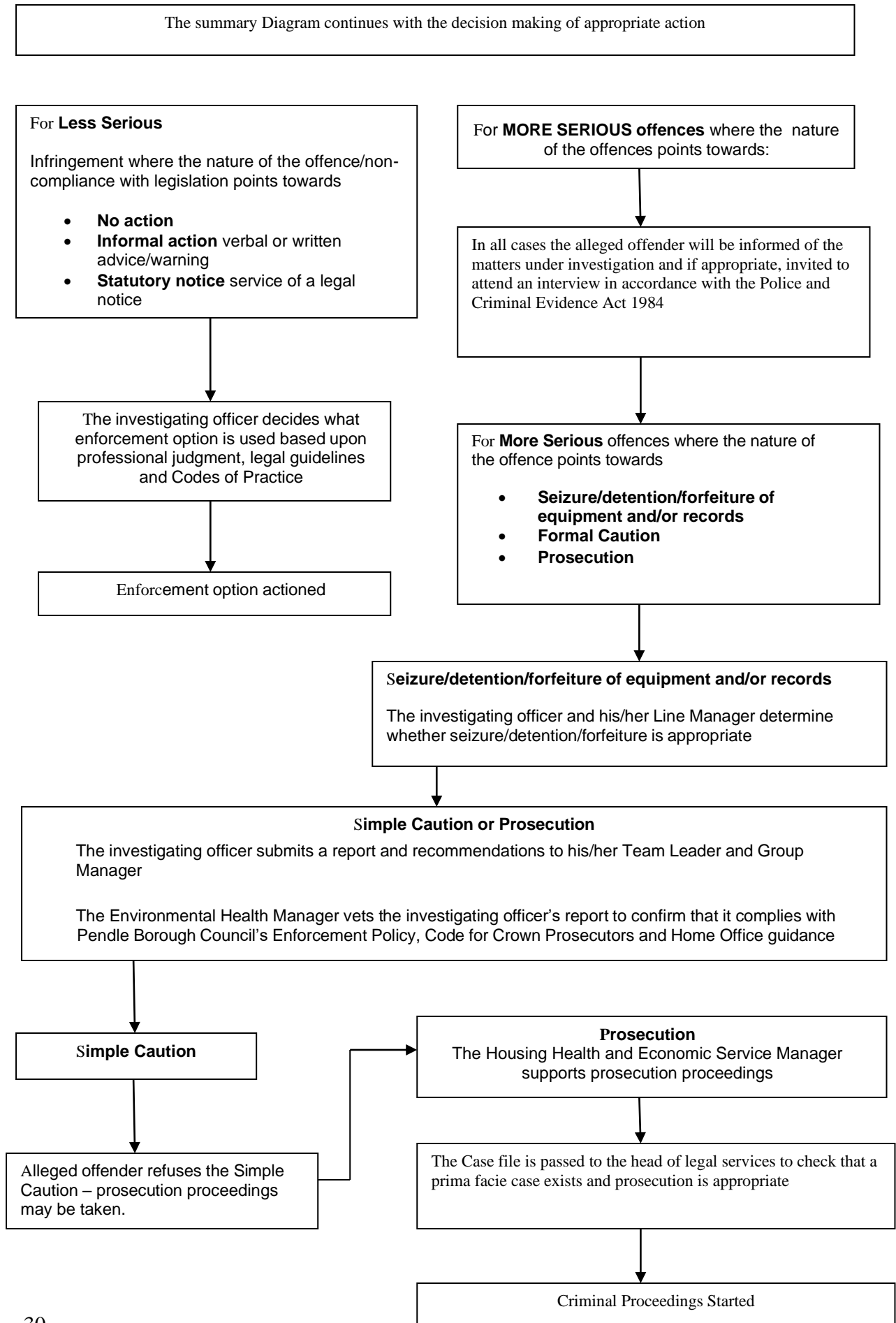
Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

Appendix C: Factors to be considered when taking enforcement action

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



Appendix D: Deciding what enforcement action to take



Appendix E: Guidance on informal enforcement action

Procedural Guidance

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

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

Appendix F: Guidance on Serving Formal Notices

Procedural Guidance

1. The following guidance will be applied in all cases except where the 'Exceptions to Policy' clause applies.
2. The specific requirements of any policies and procedures will be met, where they apply to serving notices.
3. The specific requirements of the relevant Codes of Practice and Guidance on the use of statutory notices will be met.
4. This will include any good practice guidelines that are available for the issuing of Fixed Penalty Notices and the use of Closed Circuit Television.
5. The Authorised Officer will normally discuss with the parties involved any works that will be specified in the Notice and will consider fully and then explain the options which are available.
6. The Authorised Officer will have regard to the most appropriate language to be used for a Notice and will seek to meet this need where it can be done without unduly prolonging any risk to public health and/or safety.
7. Other bodies will be notified of any formal action taken, or intend to take, where it is believed it is appropriate to do so. Such bodies may include other enforcement agencies and the Office of Fair Trading. Where appropriate, notification will include the outcome of any action.

Appendix G: Guidance on Administering a Simple Caution

Procedural Guidance

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

1. The specific requirements of the policies and procedures will be met, where they apply to Simple Cautions.
2. The specific requirements of guidance issued by the Home Office circular on the administering of a Simple Cautions and LACORS guidance will be followed.
3. As there is no legal obligation for a person to accept a Simple Caution, when explaining their significance no officer shall apply pressure to that person to accept one. However, where the offer of a Simple Caution is refused, a prosecution should normally be pursued.
4. The Simple Caution will be administered by an officer who has been designated as a 'cautioning officer' as contained in the Council's constitution.
5. Normally, the caution will be administered in person by the cautioning officer, although in exceptional circumstances it may be administered by post.
6. The offender will be informed in writing, using the appropriate forms when the issuing of a Simple Caution is proposed.
7. All Simple Cautions will be issued in writing using the appropriate forms identified in the Home Office Circular.
8. Two copies of the caution will be signed, first by the person receiving and second by the person administering the caution. One of these copies will then be handed to the person receiving the caution.
9. Should the offender refuse to accept a caution or fail to return the signed copies within 14 days, legal proceedings in all case will be pursued.
10. Details of the offence will be recorded in the specific premises file and in the Simple Caution file.
11. As soon as possible after issuing the caution, the relevant body will be notified which is detailed in the Home Office Circular or other guidance in relation to notification of offences.
13. If there is a Home Authority for the business in question, they will be notified of the details of the caution.
14. Where the Simple Caution was issued as a result of an investigation begun by a complaint made by a third party, the complainant will be informed that the caution has been issued.
15. The time limits for issuing a caution (and subsequent prosecution) will be observed should clause (10) apply.

Appendix H: The Evidential Test

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

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

Appendix I: The Public Interest Test

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

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

Some common public interest factors in favour of prosecution

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

Some common public interest factors against prosecution

- ☐ the court is likely to impose a nominal penalty;
- ☐ the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;
- ☐ the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- ☐ the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a 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), their Team Leader, Service Manager and legal representative must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

