

## **APPENDIX 2 - EXISTING**



### **TOR BAY HARBOUR AUTHORITY**

#### **ENFORCEMENT POLICY**

##### **Introduction**

One of the functions of Tor Bay Harbour Authority is to act as a regulator and enforcer for a range of legal duties and powers contained in Acts of Parliament, Regulations and Orders (including various harbour byelaws).

The purpose of enforcement is to regulate the use of the harbour and harbour estate to enable business to be conducted efficiently and safely; thereby protecting harbour users, local residents and visitors to Tor Bay Harbour and safeguarding the environment. Enforcement is a very broad term which covers a large spectrum of work and includes offering advice and information through to bringing prosecutions for more serious offences.

The Tor Bay Harbour Authority team is responsible for a range of harbour and marine legislation. This policy details the standards and guidance that will apply when the harbour officers undertake their regulatory duties.

##### **Aims**

The Harbour Authority will :-

- Seek to achieve compliance in a fair, consistent, proportional, transparent and targeted manner
- Seek to be clear, open and helpful in its approach to enforcement
- Seek to target enforcement resources at areas of highest risk, including non-compliant businesses and individuals

In doing so it will act in accordance with national guidance and standards and any supplementary local policies.

##### **Guiding Principles**

The Guiding Principles that the Harbour Authority will have regard to when undertaking their regulatory and enforcement role are :-

- Any decision regarding enforcement action will be impartial and objective, and will not be influenced by race, gender, politics, sexual orientation, disability or religious beliefs of any alleged offender, victim or witness; such decisions will not be affected by improper or undue pressure from any source

- The Harbour Authority believes that the majority of individuals and businesses wish to comply with legal requirements, and should be assisted to do so
- We will give positive feedback, wherever possible, to encourage and reinforce good practices
- In dealing with any enforcement situation, the Harbour Authority's actions will be proportionate to the scale, seriousness and intention of any non-compliance
- There will be consistency of enforcement, whilst recognising that there are different, satisfactory solutions to each issue. We will refrain from being over-prescriptive whenever possible
- This policy is built around a process of escalation. Except in the most serious cases or where advice/warnings have not been heeded, adequate opportunity will be given to rectify non-compliance before formal legal action commences
- Prosecution will normally only be considered where it is in the public interest to do so and where there have been serious breaches or where other enforcement measures have failed
- Regard shall be had to the relevant legislation and codes of practice which protect the rights of the individual and guide enforcement action (e.g. Human Rights Act, Code for Crown Prosecutors, Regulators Compliance Code)
- Regard shall be had to the Harbour Authority's own policies in respect of Customer Care, Equal Opportunities, etc.

### **Clear Standards**

- Matters relating to enforcement and regulation will be dealt with promptly
- Officers will announce themselves on arrival and show identification (unless they are already well known to the person). Officers will always explain the purpose of their visit/enquiry
- Officers will provide their name and contact details to those persons or businesses with whom they are in contact concerning a regulatory or enforcement matter
- Complaints relating to enforcement or regulatory matters will normally only be dealt with if the name and address of the complainant is given. Any such identification will be treated in confidence, but may need to be disclosed (with prior consent) should formal legal proceedings be taken against the person or business to which the complaint relates. Anonymous complaints may however be investigated if the matter relates to a serious health & safety or navigational issue etc.
- Officers will not be able to act as consultants or legal advisors to individuals or businesses, but will be available (by appointment if necessary) to discuss general issues or matters of specific enforcement with the aim of assisting or guiding compliance

- Officers will be professional, courteous and helpful in their conduct of regulatory or enforcement matters, and wherever possible will seek to work with individuals and businesses towards compliance
- Officers will endeavour to provide advice in a clear and simple manner and where any corrective action is necessary, an explanation will be given as to why it is necessary, and over what timescale it is required. Where non-compliance may result in further enforcement action or prosecution the matter will normally be confirmed in writing by way of a “Formal Warning”
- Where necessary, we will provide leaflets and other information in languages other than English to assist individuals in complying with our requirements and recommendations
- Officers will generally seek an informal resolution to cases of non-compliance except where immediate formal enforcement action is required (e.g. serious issues relating to the safety of the harbour or harbour estate, including the control of pollution, etc)
- Where there is known to be an involvement of any other enforcement agency, or any case involves joint enforcement arrangements, the Harbour Authority will consult and share intelligence with that other agency prior to taking any formal enforcement action
- Where any charges or fees are to be levied for a service, individuals and businesses will be informed of the cost or rate of charge prior to the service being provided
- Any dissatisfaction with the quality and/or advice given or any complaint concerning the harbour authority’s failure to comply with procedures, rules, statutory obligation or published service standards will be dealt with under the Council’s Corporate Complaint procedure. Copies of this procedure are available from offices of the Council, or by accessing the Council’s Website ([www.torbay.gov.uk](http://www.torbay.gov.uk)).

### **Consistency**

Consistent enforcement action is desirable, but uniformity in approach would not always recognise individual circumstances. We will encourage consistency of approach by :-

- Providing appropriate training and supervision of officers
- Ensuring compliance with the standards set out in this policy
- Recognising that we should not normally take formal enforcement action or prosecution in the case of minor infringements
- Recognising that in some situations, we have no legal discretion but to pursue enforcement action
- Taking into consideration the guidance issued by Government Departments and other national agencies, e.g. Department for Transport, Maritime & Coastguard Agency, Health and Safety Executive, etc.

## **Targeting and Proportionality**

We will not initiate formal enforcement procedures without a clear need to do so. We believe that through a positive, proactive approach, we can achieve higher compliance rates and better overall outcome than by using reactive enforcement action.

Any formal enforcement procedures will :-

- Aim to change the behaviour of the offender
- Aim to eliminate any financial gain or benefit to the individual or business from non-compliance
- Be responsive and consider what is the most appropriate sanction for the particular offender and regulatory issue
- Be proportionate to the nature of the offence and the harm caused
- Aim to deter future non-compliance

Our greatest enforcement effort will be where an assessment shows that both :-

- (i) A compliance breach or breaches would pose a serious risk
- (ii) There is a high likelihood of non-compliance

## **Monitoring**

To ensure that this policy is effective, a number of monitoring and feedback mechanisms will be utilised :-

- Opportunities for businesses and members of the public to comment on the policy
- Periodic consultation with harbour stakeholders, e.g. the Harbour Liaison Forums
- Through open discussion with the public and elected members as part of the Council's Harbour Committee cycle of business.

**June 2012**



## **TOR BAY HARBOUR AUTHORITY**

### **PROSECUTION POLICY**

As stated above the decision to prosecute is a serious one, having implications for the defendant, for witnesses, sometimes for the Harbour Authority and wider still, for the consistent and effective maintenance of standards. Prosecution will be considered only when :-

- There is sufficient admissible and reliable evidence to provide a realistic prospect of conviction; and
- It is in the public interest to do so.

Prosecution will normally be in the public interest when one or more of the following criteria are satisfied :-

- a) Unlawful acts or omissions have seriously or repeatedly compromised the safe and efficient use of the harbour/harbour estate or the environment
- b) The offending created/posed a risk to public safety or to the environment
- c) Through blatant action or inaction risks causing pollution have been exacerbated
- d) Where there is disregard for safe practice
- e) The offence involves a failure to comply in full or in part with a statutory notice, including a Harbour Master's direction
- f) The offender has relevant previous convictions or has been cautioned for a relevant matter
- g) The offender has flagrantly breached harbour bye-laws or other harbour legislation and has ignored advice or requests to remedy breaches of such legal requirements
- h) The offender obstructs an Officer of the Harbour Authority carrying out statutory duties or where the offence involves the failure to supply information or the supply of false or misleading information upon lawful request
- i) The offence, whether or not serious in itself, is widespread in Tor Bay Harbour
- j) The Harbour Authority is under a statutory duty to enforce legislation

The above list is not exhaustive and the decision whether to prosecute will be taken having regard to the legal proceedings sheet and the individual circumstances of each case.

Regard will be had to the Code for Crown Prosecutors at all stages of proceedings.

**June 2012**

## Legal Proceedings Decision Sheet

	<b>For Prosecution ( = -1 )</b>	<b>Against Prosecution ( = +1 )</b>	<b>Score</b>
1.	Serious Incident	Minor Incident	
2.	Deliberate act or potential to cause injury or damage through reckless disregard.	Unforeseeable/Accidental / Minor error of judgement	
3.	Inadequate control systems in place.	Adequate control systems in place.	
4.	Previous advice already given to the company / individual.	No precise information given by regulator previously.	
5.	Company/individual aware of the risk involved in their action.	Company/individual could not have been aware of the risk involved in their action.	
6.	Management/supervisor responsible for the incident.	Employee or supplier responsible for the incident.	
7.	Poor confidence in management / individual.	Good confidence in management / individual.	
8.	Previous prosecution for a similar offence.	First offence.	
9.	No remedial action taken / proposed.	Remedial action already taken.	
10.	Management / individual obstructive in the investigation.	Management / individual co-operative with the investigation.	
11.	Attempt to cover up the true facts.	Attitude open and honest.	
12.	Council reputation tarnished if prosecution is not pursued.	Prosecution may be seen as over zealous enforcement.	
13.	Prosecution will secure definite results, e.g. raise harbour safety standards	No obvious improvements in standards will result from prosecution.	
14.	Prosecution will resolve an important legal issue.	Prosecution will not clarify a legal issue.	
15.	Regulator identified problems on a previous occasion.	Regulator did not identify problems on a previous occasion.	
<b>Total</b>			

If statements in column 1 are true, score -1.

If statements in column 2 are true, score +1.

If neither statements are true, or not applicable, score nil.

A total minus score will favour a prosecution.

However, a prosecution must be justifiable by a logical argument, including such reasons as :-

- (i) the protection of employees or members of the public;
- (ii) to remedy deficiencies due to incompetent or irresponsible activities.