

APPENDIX 2



TOR BAY HARBOUR AUTHORITY

ENFORCEMENT POLICY

The Harbour Authority has statutory powers to regulate the conduct of vessels in the harbour's jurisdiction and to assist in managing the risks of marine operations. To these ends, enforcement action will sometimes be appropriate.

The Harbour Authority recognises that most harbour users want to comply with the law. Therefore, where it can, the Harbour Authority will help users to meet their legal obligations without unnecessary expense, while taking firm action – including prosecution where appropriate – against those who flout the law or act irresponsibly.

The Harbour Authority will provide information and advice in plain language on the rules that apply and will disseminate it as widely as possible. Also, the Harbour Authority will provide encouragement and support to ensure that their legal powers are used appropriately to improve and safeguard public health, public safety and the environment. The purpose of any enforcement action is to protect the safety of residents, harbour users and visitors to Tor Bay Harbour. The Harbour Authority has the options of negotiation, education and persuasion and, where a criminal offence has occurred, of cautioning or prosecuting the offender.

The Harbour Authority will minimise the costs of compliance for users by ensuring that any action it takes is proportionate to the risks. As far as the law allows, the Harbour Authority will take account of the circumstances of the case and the operator's attitude when considering action.

The Harbour Authority will carry out its duties in a fair, equitable and consistent manner. It will seek to be clear, open and helpful in its approach to enforcement. The Harbour Authority will seek to target enforcement resources where they are most needed and will be informed by its other Policies, Aims and Objectives. It will liaise with other authorities and enforcement bodies as appropriate.

Clear Standards & Consistency

- The Harbour Authority will distinguish in written correspondence those matters which the law requires must be dealt with from recommendations which provide advice on good practice but do not require compliance (notwithstanding that failure to comply may prejudice any defence which may be available should prosecution ensue).
- Where there is a shared enforcement role, such as with the Maritime and Coastguard Agency or other statutory bodies, the Harbour Authority will ensure that liaison takes place at an early stage to promote a consistent approach.

Openness & Helpfulness

- We will provide information and advice in plain language.
- We will be open about how we set about our work, including any charges that may be set.
- We will consult with harbour users, other consumers and workforce representatives in our endeavours to be open and clear in our approach.
- We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.
- We will offer you the opportunity to put your point of view forward before action is taken against you, unless immediate action is necessary.
- We will provide a courteous and efficient service and our staff will identify themselves by name.
- We will provide a contact point and a telephone number for further dealings with us and we will encourage harbour users to seek advice/information from us.
- We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Targeting & Proportionality

- We will always make ourselves available to advise whenever our other priorities permit.
- We recognise that there are sometimes different satisfactory solutions to some problems and we will refrain from being over-prescriptive whenever we can.
- We support the principles of BATNEEC (Best Available Technology Not Entailing Excessive Costs) and recognise that our actions should be in the public interest.

Procedures and Appeals and Complaints against Tor Bay Harbour Authority

- Whenever possible we will make clear what the next action, if any, will be, for example a further warning or a notice of prosecution.
- In cases where immediate enforcement action is considered necessary then we will provide you with a written explanation as to why enforcement action has been taken against you. We will ensure that advice from an Officer is put clearly and simply and this will be confirmed in writing on request, and where remedial work is required, will explain why it is necessary.
- Where action is taken by another agency this may not preclude the Harbour Authority from pursuing its own action.
- Where statutory provisions exist for you to appeal against any action taken we will inform you of those provisions.
- If you are dissatisfied about the action taken by the Harbour Authority or where the Harbour Authority has not taken any action and you want a further response, a Corporate Complaints Procedure is available to you. Contact Torbay Council, Town Hall, Castle Circus, Torquay, Devon. TQ1 3DR. Telephone – 01803 201201.

June 2011



TOR BAY HARBOUR AUTHORITY

PROSECUTION POLICY

The Harbour Authority has statutory powers to enforce relevant legislation and in some circumstances prosecution will be appropriate. Prosecution is a serious step and must be regarded as the ultimate sanction. A prosecution will only be initiated when the alleged conduct has been such that the Harbour Authority cannot impose an appropriate sanction itself and the matter therefore deserves the attention of the Court.

The Harbour Authority is committed to assisting other enforcement agencies, including the Police, to pursue their statutory duties. The Harbour Authority will liaise with any enforcement agency that may also have an interest in any matter being considered for prosecution.

Officers will always explain the purpose of their visit or interview. Each case will be considered on its individual merits and a prosecution will only be initiated in accordance with this Policy together with the Harbour Authority's Enforcement Policy.

Having duly considered the Harbour Authority's internal policies due regard will be given to the Code for Crown Prosecutors. Any decision to initiate a prosecution will be recorded in writing and the reasons for initiating the prosecution will be given.

Any investigation carried out by the Harbour Authority will be conducted pursuant to the Police and Criminal Evidence Act 1984 with due regard to the applicable Codes of Practice. In addition, where applicable, best practice will be observed as set out in national guidance issued by bodies such as the Department for Transport (Ports Policy) and/or Maritime and Coastguard Agency.

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 :-

- (i) Unlawful acts or omissions have seriously or repeatedly compromised safety of navigation, public safety or the environment;
- (ii) The offending created/posed a risk to navigation, public safety or to the environment;

- (iii) Through blatant action or inaction the risks of and/or actual pollution have been exacerbated;
- (iv) Where there is clear disregard for safe practice;
- (v) The offence involves a failure to comply in full or in part with a statutory notice;
- (vi) The offender has relevant previous convictions or has been cautioned for a relevant matter;
- (vii) The offender has flagrantly breached the law or has ignored advice or requests to remedy breaches of legal requirements;
- (viii) 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;
- (ix) The offence, whether or not serious in itself, is widespread in Tor Bay Harbour;
- (x) 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 (Appendix 1) and the individual circumstances of each case.

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

The Harbour Authority recognises that once a prosecution has been commenced control of the matter is ceded to the Courts and the Criminal Justice System.

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Appendix 1

Legal Proceedings Decision Sheet

	For Prosecution	Against Prosecution	Score
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	Harbour Authority reputation tarnished if prosecution is not pursued.	Prosecution may be seen as over zealous enforcement.	
13	Prosecution will secure definite results, e.g. protection of workforce.	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.	

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:-

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