

HEALTH IMPROVEMENT PERFORMANCE COMMITTEE

14 MARCH 2005

ENFORCEMENT POLICIES IN RELATION TO NOISE AND LOCAL AUTHORITY AIR POLLUTION CONTROL

REPORT OF DIRECTOR OF HEALTH AND HOUSING

Contact Officer: Sue Blazdell Tel No: 01962 848479

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

Following a previous Inter Authority Audit, a number of further actions were identified to be taken to improve the overall Environmental Protection service. The improvements are based on meeting the requirements of a set of standards that apply to all Environmental Protection services across Hampshire & Isle of Wight.

All actions have already been completed with the exception of specific enforcement policies in respect of noise and local authority air pollution control. A generic policy for all areas existed before but the audit recommended that individual policies were produced for each area. These policies have now been completed and will underpin the Council's enforcement role and activities.

The Committee is requested to comment on the policies prior to endorsement by Cabinet.

RECOMMENDATIONS:

- 1 That Cabinet be recommended to approve the draft Environmental Protection policies as detailed in Appendices A and B.

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### ENFORCEMENT POLICIES IN RELATION TO NOISE AND LOCAL AUTHORITY AIR POLLUTION CONTROL

#### Report of Director of Health and Housing

#### DETAIL:

##### 1 Introduction

- 1.1 Many services within the Environmental Health Service are subject to Inter Authority auditing within a framework created by the Hampshire & Isle of Wight Chief Environmental Health Officer's Group. The last inter authority audit of the Environmental Protection Service (HE4 refers) identified a number of areas of good practice, however they also drew attention to areas which would improve the service.
- 1.2 All of the actions have now been completed with the exception of specific enforcement policies in respect of noise and air pollution control. The new policies are the subject of this report.
- 1.3 The draft policies follow a format used for other Environmental Health and will underpin the Council's enforcement role. They are also in accordance with national guidance concerning enforcement activities contained within the Enforcement Concordat.
- 1.4 The Committee is requested to comment on the policies prior to endorsement by Cabinet.

#### OTHER CONSIDERATIONS:

##### 2 CORPORATE STRATEGY (RELEVANCE TO):

- 2.1 The enforcement of environmental protection legislation is a statutory duty and makes a positive contribution towards the Council's promotion of a healthier, safer and more caring community.

##### 2.2 RESOURCE IMPLICATIONS:

- 2.3 There are no direct resource implications.

#### BACKGROUND DOCUMENTS:

None

#### APPENDICES:

- A Draft enforcement policy on noise
- B. Draft enforcement policy on LA-IPPC and LAPPC

# **ENVIRONMENTAL HEALTH SERVICE**

ENVIRONMENTAL PROTECTION TEAM

## **ENVIRONMENTAL PROTECTION ENFORCEMENT POLICY (NOISE)**

<b>AUTHOR:</b>	<b>SUE BLAZDELL</b>
<b>DATE:</b>	<b>FEB 2005</b>
<b>REVIEW</b>	<b>FEB 2006</b>
<b>ISSUE :</b>	<b>1</b>

## 1.0 INTRODUCTION AND SUMMARY

- 1.1 It is this Council's policy to strive to ensure that its environmental protection function is carried out in an appropriate manner.
- 1.2 In determining the nature of any enforcement action the Council is fully committed to having due regard to the advice given in statutory Codes of Practice and guidance issued by DEFRA, DETR, DoT, IOA, the Chartered Institute of Environmental Health and current good practice.
- 1.3 In addition the Council fully adopts the principles of the Central and Local Government Concordat on Good Enforcement. By adopting the Concordat we commit ourselves to ensuring that our regulatory duties are undertaken in a fair, consistent and transparent manner so as to reduce any unnecessary burden on businesses or individuals.
- 1.4 The Council will seek to ensure compliance with the law but will carry out this duty in an appropriate manner. The Environmental Protection team is consulted to provide comments concerning planning and public entertainment licence applications, following their submission to the Council for determination. With regard to these applications the Environmental Protection team will, where appropriate, recommend the imposition of conditions to any planning consent or entertainment licence under consideration. Conditions will only be imposed where they are considered to be:-
  - **Proportionate.** Any action that we take will relate to the seriousness of the risk to environmental protection of any individual, the public or the environment and to the seriousness of any breach of the law;
  - **Consistent.** We will try to ensure that our officers act in a similar way when faced with similar circumstances. We will also work with other authorities to ensure that this principle is applied at a local and national level;
  - **Transparent.** The Council will try to help people understand what the law requires of them and make clear what needs to be done, and not done, to comply. We will also make clear what people should do if they are not happy about any action we have taken or are proposing to take;
  - **Targeted.** Our enforcement efforts will be directed against those whose activities pose the most serious risks or those who have a history of non-compliance.
- 1.5 We will, where possible, endeavour to use its enforcement powers as a means to an end, rather than pursuing enforcement for its own sake. Clear guidance, information and advice will be given to persons, organisations or businesses so as to positively encourage compliance with the legislation.
- 1.6 We will liaise with other enforcement agencies or bodies where there is shared enforcement for example, the Police, other Council Departments such as Planning, licensing and Housing Services. It is recognised that some stakeholders will have particular needs e.g. out of hours visits, translation facilities and we will endeavour to accommodate these requirements where practicable.
- 1.7 All authorised officers when making enforcement decisions will have regard to the Council's policy. Any departure from the policy must be exceptional, capable of justification and approved by the Director of Health and Housing (DHH) or Head of Health and Environment (HOHE) before the decision is taken, unless it is considered that there is a significant risk to the public in delaying the decision.
- 1.8 All authorised officers will be fully acquainted with the requirements of the policy. Initial and ongoing training will be undertaken as necessary to ensure that this is and remains the case.
- 1.9 This policy will be reviewed in the light of experience and any new Guidance.

- 1.10. This specific policy should be read in conjunction with the Environmental Health Services Enforcement Policy dated April 2002 and associated Environmental Protection procedures located in X/HHM/EP/Procedures.

## 2.0 What we will do

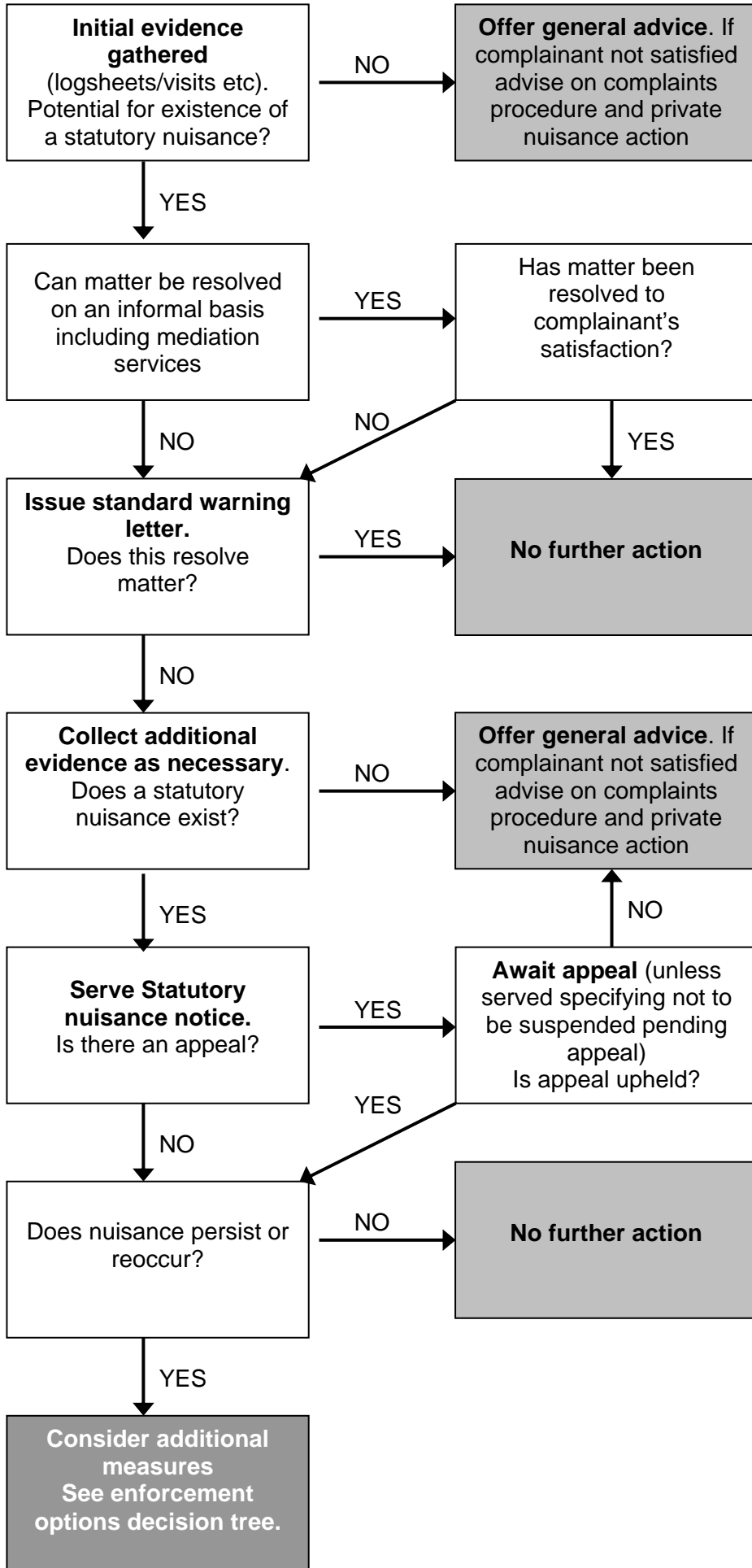
- We will provide clear advice and information on how to comply with any legislation, Codes of Practice or Guidance.
- We will serve Statutory Notices, making clear what steps are being required for compliance.
- Where there are rights of appeal against Statutory Notices, advice on appeal mechanism will be clearly set out in writing at the time the Notice is served.
- We will provide advice and information to businesses where appropriate and endeavour to ensure that all our correspondence on enforcement is clear and unambiguous
- We will advise individuals and businesses of a named officer responsible for dealing with their case.
- We will expect full voluntary compliance with Statutory Notices but will not hesitate to use enforcement powers where necessary. This may include the seizure of noise making equipment and the instigation of legal proceedings.
- We aim to provide a fair and efficient enforcement service. However, in the event that a person or a business is not satisfied with the Environmental Protection Team, the Council has a formal complaints procedure for the registering of complaints. All complaints will be investigated and a written response provided within 15 working days where possible.

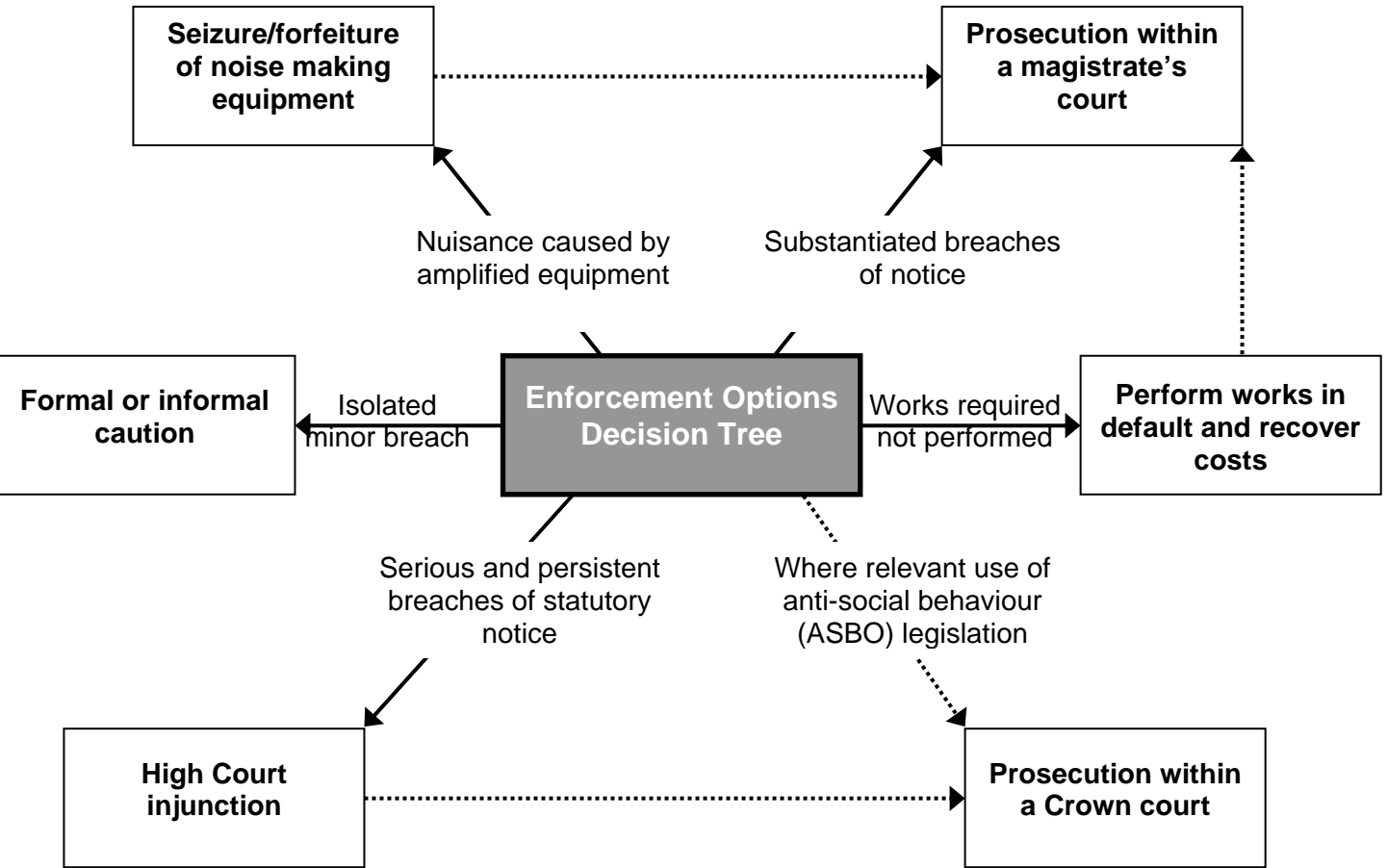
## 3.0 Enforcement action

	<b>Action</b>	<b>Appropriate use</b>
1.	No action	Generally for unsubstantiated allegations or anonymous complaints
2.	Verbal advice.	General advice where allegations of nuisance are unsubstantiated
3.	Warning letters	General advice where allegations of statutory nuisance are unsubstantiated or where immediate action was taken by the alleged offender to abate the nuisance. Warnings are also given where there is insufficient evidence available to establish statutory nuisance or when extenuating circumstances apply.
4.	Service of Statutory Notices e.g. under the Environmental Protection Act 1990 or Control of Pollution Act 1974 etc	Served where statutory nuisance has been substantiated, or where such action is considered appropriate and necessary.
5.	Prosecution in a Magistrates Court	For substantiated breaches of statutory Notices i.e. where Notices have not been complied with. For obstruction of authorised officers carrying out their duties.
6.	Seizure/forfeiture of noise making equipment	Where statutory nuisance continues unabated in breach of an Abatement Notice
7.	High Court injunction	For serious and persistent breaches of statutory Notices.

#### 4.0 Enforcement decision

- Each case will be considered on its own facts and merits. The decision on what level of enforcement action is necessary will take into account;
  - **Environmental impact of the offence.** We will be more likely to prosecute where the breach of the condition has resulted in a serious environmental impact.
  - **Foreseeability of offence or circumstances leading to it.** Where an offence is clearly foreseeable, or where there have been serious breaches or incidents that the offender is clearly aware of and has failed to take effective remedial action we will be more likely to prosecute.
  - **Intent of the offender individually.** We will be more likely to prosecute where we have evidence of a history of offences.
  - **Attitude of the offender.** We will be more likely to prosecute where the offender shows reluctance to take appropriate remedial action to prevent further breaches of statutory nuisance.
  - **Prosecution of companies and individuals** Where a company is involved it will be usual practice to prosecute the company. However where individuals have caused offences e.g. obstruction, then we will consider prosecuting those individuals. We will also consider the part played in the offence by Directors and Managers and action may be taken against such personnel, if appropriate.
  - **Serious offences,** the Council will consider taking action in the High Court.
  - **Public information** Details of prosecutions including the offences, verdict and sentence will be entered on the public register. It will be our policy to give factual information about prosecutions to the media.







# **ENVIRONMENTAL HEALTH SERVICE**

**ENVIRONMENTAL PROTECTION TEAM**

**ENVIRONMENTAL PROTECTION**

**LA-IPPC & LAPPC ENFORCMENT**

**AUTHOR  
DATE**

**P Tidridge  
November 2004**

**REVIEW  
ISSUE**

**May 2004  
1**

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