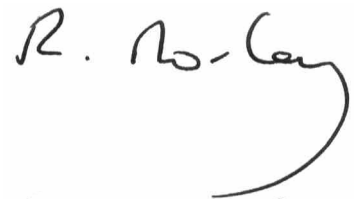




Environmental Health Services (Commercial)

Health and Safety Service Plan 2010-2011

A handwritten signature in black ink, appearing to read "R. Norley". The signature is fluid and cursive, with a long, sweeping underline that curves back towards the end of the name.

Robert Norley
Head of Environmental Health Services

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Introduction

This document is Exeter City Council's Health and Safety Service Plan. It forms the basis of the health and safety enforcement function for the authority and ensures that national health and safety priorities are addressed along with locally identified needs. It demonstrates our commitment to improving Health and Safety outcomes, sets out our priorities and planned interventions for the current year and targets them to maximise their impact.

The Council has a duty to act as an enforcing authority for health and safety in premises for which it is responsible – this is predominantly in the service sector. The plan outlines how the Environmental Health Commercial Section will undertake that function.

It has been produced to ensure that local businesses, employers and employees, members of the public, council officers and Members understand the approach to health and safety adopted by the Council. The service plan will help to ensure that the actions of the Council are fair, consistent, open and effective.

The Council will be guided by the Health and Safety Executive guidance issued under Section 18 of the HSWA. This is the 'Standard' with which the Council must comply. The Section 18 Standard applies to local authorities and Health and Safety Executive enforcement staff. One of its key elements is a requirement to produce an annual service plan.

Key Facts

In the UK during 2008/09 it was estimated that:

- 1.2 million people were suffering from an illness they believed was caused or made worse by their current or past work. 551,000 of these were new cases;
- 180 workers were killed at work, a rate of 0.8 per 100,000 workers;
- 246,000 reportable injuries occurred, according to the Labour Force Survey, a rate of 870 per 100,000 workers;
- 29.3 million days were lost overall (1.24 days per worker), 24.6 million due to work related ill health and 4.7 million due to workplace injury;

Key Tasks

The Rogers review (2007) reported on the National Priorities for local authority enforcement. This identified improving health at work as one of the national priorities and clearly identified health and safety law enforcement as a key priority to try and reduce the incidence of ill health and days lost arising from work activities.

The objective of the health and safety service in contributing to this aim is to ensure that risks to person's health, safety and welfare from work activities are properly controlled through advice and enforcement.

Key tasks which lead towards fulfilling this objective are:

- to maintain a register of all premises where the service enforces health and safety legislation;
- to inspect at predetermined intervals or by the use of other intervention strategies, and in response to complaints, relevant workplaces to determine compliance with legislation;
- to take the most appropriate action upon inspection of relevant workplaces including the use of advice, informal correspondence, improvement and prohibition notices and the institution of legal proceedings;

- to educate proprietors of relevant workplaces in health, safety and welfare matters and their legal responsibilities in relation to their occupation by the distribution of leaflets and the provision of advice and information;
- to investigate specific accident notifications;
- to advise on the design of relevant workplace premises prior to and during alterations and construction;
- to liaise and work in partnership with the Health and Safety Executive (HSE) and the Fire Authority regarding the enforcement of the legislation;
- to comply with the HSE section 18 guidance in respect of inspection programmes.

SECTION 1

SERVICE AIMS AND OBJECTIVES

1.1 Aims and Objectives

- 1.1.1 It is Exeter City Council's aim to actively improve Health and Safety outcomes for people working in the City and members of the public who visit or are affected by workplaces in the district.
- 1.1.2 We will continue to develop new ways to establish and maintain an effective health and safety culture so that all employers take their responsibilities seriously, the workforce is fully involved and risks are properly managed.
- 1.1.3 Work will be targeted to manage the risk in high-risk, poor-performing and rogue trader businesses. It will be proportionate, consistent and transparent and have suitable monitoring and review systems.
- 1.1.4 The Council is mindful of the burdens on local businesses particularly where, for example, the economy is seasonal and subject to fluctuation. The Council will work in partnership with the Health and Safety Executive (HSE) and with local businesses offering information, advice and assistance.

1.2 Links to Strategic Objectives and Plans

- 1.2.1 The Council is committed to working with all relevant stakeholders in order to achieve its vision, playing a part in LAAs where appropriate. The key strategic objectives are:

Strategic Objective	Vision Theme
Enhance and protect the environment, reducing the causes and minimising the impact of climate change.	City where the environment is cared for
Further improve the character of the city and facilities for culture and leisure	Cultural and fun place to be. City where people are healthy and active.
Ensure that Exeter is a buoyant, dynamic and innovative regional city with sustainable growth.	A prosperous city.
Have strong and clear governance arrangements that enable the communities of Exeter to influence and help shape decisions about their locality and the city.	Excellence in public service.
Use resources effectively and provide high-performing, value-for-money services that focus on customer needs.	Excellence in public service.
Promote a positive image and reputation and ensure high levels of customer satisfaction.	Excellence in public service.

Whilst there are no specific health and safety targets set out in the above, health and safety enforcement will contribute to raising health standards and reduce health inequalities through the delivery of relevant services, in partnership with other agencies.

SECTION 2 BACKGROUND

2.1 Profile of Authority

- 2.1.1 Exeter City Council's area of enforcement has a population of approximately 111,000 people. It covers an area of 4774 hectares comprising a mix of residential and commercial properties as well as industrial and trading estates. Although set in a predominantly urban area the City offers only a limited range of industry with the main activities being retail sales, office activities, warehousing and distribution.
- 2.1.2 Appendix 1 shows the **organisational structure** of Exeter City Council and the Committee structure. The Commercial Section which delivers the health and safety service is within Environmental Health Services, part of the Community and Environment Directorate which reports to the Scrutiny Committee - Community.

SECTION 3 SERVICE PROVISION

Exeter is predominantly an urban area and the area has many small businesses. The Council is responsible for around 2473 premises.

3.1 Profile of Businesses in Exeter

The Council enforces health and safety in mostly small and lower risk businesses that are predominantly in the service sector and are generally as described in paragraph 2.1.1 above.

3.2 Inspection Programme

- 3.2.1 The Council uses the guidance given in HELA Circular (67/2 Revised 1) to risk rate its premises and prioritise visits. The guidance categorises premises with a score that determines the inspection frequency. This ranges from annual to 2 yearly inspections for higher risk premises.
- 3.2.2 Lower risk premises are reached by other intervention strategies, many of which will be delivered in partnership with other Devon Authorities and the HSE and HPA.
- 3.2.3 As a result of current national and local drivers for change (e.g. Hampton /LBRO/Rogers Review) we aim to focus Health and Safety enforcement resources into areas where they are likely to have the greatest impact. In the coming year we shall continue to concentrate on specific topic areas (see 3.6.2) during proactive inspections and reactive investigation, rather than complete all-encompassing inspections. These areas have been identified nationally as contributing to the highest rate of accident/incidents and ill health at work, across all health and safety enforcing authorities.
- 3.2.4 Scope will be retained to meet individual service needs of the City and local businesses and to review the structure and arrangements to any change resulting from the Unitary Authority decision.

3.3 Scope of the Health and Safety Service

3.3.1 The health and safety service comprises a range of key functions:

- health and Safety inspections or other intervention strategies in local authority enforced premises;
- investigating accidents, cases of occupational disease and dangerous occurrences;
- responding to complaints about workplace conditions;
- dealing with other statutory notifications, for example adverse lift reports and asbestos removal;
- health and safety awareness training and initiatives;
- production of a health and safety newsletter/booklet for all Exeter enforced businesses;
- provision of health and safety information and advice through the development of the website;
- partnership working with the Health and Safety Executive and Devon Local Authorities on key intervention projects.

3.3.2 Proactive aspects of the health and safety service, for example the inspection programme, are delivered jointly with other proactive services such as food hygiene inspections. The reactive aspects of the service, for example accident investigations, are responded to along with other complaints and requests for service.

3.3.3 The health and safety is delivered by suitably trained and experienced officers, in accordance with a competency and development scheme. This scheme has been designed to meet the requirements of Health and Safety Executive and Local Authority Enforcement Liaison Committee (HELA) Section 18 guidance. The competency scheme was revised and updated during 2006/07.

3.2.4 The premises profile according to the inspection rating scores are as follows:

Highest hazard/Risk	A	(10) 10
Intermediate hazard/Risk	B1	(33) 27
	B2	(121) 116
	B3	(366) 321
Lowest hazard/Risk	B4	(699) 683
	C	(882) 925
	U	(358) 381

3.3.5 In keeping with the advice given to local authorities in LAC 67/2 from 01/04/10 Category B2 and lower rated premises will no longer be included in the planned inspection cycle. The service will use other intervention strategies to engage with the proprietors and employees of these businesses. As recommended Category B2 and B3 ratings will be reviewed after a period of 3 years and Category C ratings after 5 years. Intervention strategies include partnership projects with the HSE and local enforcement initiatives such as updating the services database of commercial premises and working with the local police on campaigns such as the one involved with reducing violence in the workplace.

3.3.6 Low risk premises do not form part of the main inspection programme but health and safety issues may be addressed during food, and licensing inspections or

following complaints or accidents. A proportion of low risk premises (those approached by other intervention strategies) will be inspected each year.

- 3.3.7 External consultants are used to undertake inspections or other intervention strategies of low risk premises. The decision to employ contractors is taken by the EH Manager in consultation with the Head of Service and will be subject to the following criteria:
- there is a direct need to ensure statutory performance targets are met;
 - external contractors must meet the requirements of HELA Section 18 guidance;
 - the cost of the work can be met within existing budgets; and
 - previous knowledge of the competency and quality of the consultants.
- 3.3.8 The Council still has a duty to enforce health and safety standards in low risk premises and we will work with such businesses and/or their representatives to improve health and safety standards.
- 3.3.9 The visit performance analysis for the last year is detailed in Appendix 2.
- 3.3.10 The database will be continually updated in conjunction with the Business Support Team who will assist with a street/district premises audit (4yr programme). A proportion of uncategorised premises will be visited, though the active audit (see above) may influence progress as new premises are identified.
- 3.3.11 The health and safety service operates from the Civic Centre between 8.30am and 5.00pm Monday to Friday. Evening and weekend inspections are carried out as determined by the risk based inspection programme and the premises opening hours.
- 3.3.12 Emergency health and safety issues are currently directed initially to a 24 hour central control team and then onto senior officers as required. In addition the Council's fully revised website is used to provide information about health and safety services for consumers and businesses and also provides a direct email address for service requests.

3.4 Complaints / Requests for Advice / Advice to Business

- 3.4.1 In addition to this programme there may be a number of low risk inspections, which have been carried over from 2009/10 which will be completed as a priority in the first quarter of 2010/11. There are also approx 380 businesses currently on the health and safety database which are unclassified. A proportion of these will be newly opened businesses, which is a constant aspect of the commercial sector. Whilst many of these premises have been inspected due to changes in the recording of the rating system they have not yet been classified. Therefore as part of the routine maintenance of the database such premises will be incorporated into the programme as a priority.
- 3.4.2 Additional inspections will also arise during the year by virtue of complaints, new business start-ups, change of use, major alterations/refurbishments and request for inspection. It is also estimated that 20% of inspections of category A - B2 premises will generate a revisit. A revisit will always be carried out where statutory notices have been served, in all other cases the officer will make a professional judgement as to the requirement for a revisit.
- 3.4.3 In accordance with the current strategy contained in "The Health and Safety of Great Britain \ Be Part of the Solution" (HSE, 2009) and HELA Strategy, as

outlined in 67/2, the focus of inspection activity within the planned programme will concentrate on measuring

- confidence in management;
- health, safety and welfare performance; and
- the compliance gap.

In addition to these elements the Council will base its Health and Safety Plan on Section 18 guidance, taking into account national, regional and local priorities.

- 3.4.4 From 1 July 2007, all enclosed workplaces became smoke free, as a result of the Health Act 2006 and subsequent regulations. All authorised Health and Safety Inspectors are also authorised to enforce the smoke-free provisions. Smoke free compliance for businesses will be incorporated into the proactive inspection work undertaken by the Environmental Health Service, in addition to responding to complaints.
- 3.4.5 The approach is therefore about focussing health and safety enforcement resources into areas where they are likely to have the greatest impact rather than completing all-encompassing inspections. This will fall in line with the principles proposed by the Local Better Regulation Office.
- 3.4.6 The above does not preclude the importance of providing wider guidance on health and safety compliance to new businesses and following specific service requests. Proactive health and safety education work will be suitably balanced against targeted enforcement activity.
- 3.4.7 The authority has a duty to investigate complaints about health and safety conditions/issues and about its health and safety service provision. A number of complaints/service requests about health and safety are received annually, all of which will be dealt with as appropriate or passed to other agencies (service requests were received in 2009/10).
- 3.4.8 No complaints have been received regarding the service provision of the Authority.
- 3.4.9 The service recognises the importance of providing advice to businesses as part of effective health and safety enforcement. As well as the provision of specific advice during inspections and with post inspection correspondence, a wide range of general health, safety and welfare advice is distributed to businesses. Examples include an annual health and safety newsletter, a self inspection pack and a model stress policy to assist businesses in proactively identifying action points to ensure compliance with health and safety legislation.
- 3.4.10 The Council website has also been totally revised and allows direct access and links to local and national health and safety information detailed within this service plan.

3.5 Statutory Notifications

- 3.5.1 Prescribed accidents, dangerous occurrences and occupational diseases are reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995. Accidents would include fatalities and accidents involving visits to hospital or more than 3 days off work. Certain accidents involving employees, the self-employed and members of the public are also reportable.

- 3.5.2 In 2009/10 there were statutory notifications of accidents (slips, trips and falls, and handling accidents). For comparison there were 206 accidents notified in 2008/09 and 198 in 2007/08 showing a similar outcome year on year.
- 3.5.3 The Council has a duty to investigate accidents to determine whether offences have been committed and to prevent a recurrence. The authority also receives notifications of certain unsafe equipment and must respond and investigate such notifications. Decisions as to which accidents require a full investigation are made by the District Environmental Health Officer.
- 3.5.4 The service has a formal policy and procedure covering the type of accident, industrial disease notification or related service request, which the authority will investigate. This was revised during 2009 following new national guidance issued by the HSE. The Council is committed to reducing workplace accidents.
- 3.5.5 As a 'responsible authority' for the purposes of the Licensing Act 2003 and the Gambling Act 2005 the section has a duty to respond to premises licence applications etc. A number of applications will require scrutiny, some of which may require amendments by negotiation.
- 3.5.6 Liaison with other organisations is essential in order to achieve consistency and effectiveness of the health and safety service. The service is represented on the Devon CEHOs Health and Safety Working Group, which meets bi-monthly. This group includes a representative from the Health and Safety Executive (HSE) and maintains links with other local authority health and safety enforcement officers.

3.6 HELA Strategy / Health & Safety Executive Strategic Plan.

- 3.6.1 The Authority has a duty to focus its activities on national priorities and strategies and in particular the Section 18 Standard, to secure a reduction in accidents and ill health in the workplaces for which we are responsible. The Standard recognises that 'partnership' is the way HSE and LAs do business and reflects the statement of intent agreed between the, HSE and ourselves.
- 3.6.2 Strategic themes for 2010/11 remain:
- reducing Slips and trips;
 - musculoskeletal disorders;
 - disease reduction – dermatitis, asthma, asbestos and legionella;
 - noise and vibration – bars, clubs and pubs with live music;
 - violence at Work;
 - falls from height;
 - royal Mail;
 - gas Safety.
- 3.6.3 The work of the Commercial Section will address other issues when undertaking visits/developing initiatives in workplaces; health at work is an important issue. Interventions with regard to new compliance responsibilities to reduce exposure to occupational tobacco smoke will continue to be considered.
- 3.6.4 European Health and Safety Week is a national event, which the Council has supported as a means of raising the profile of health and safety and we will continue to do so, resources permitting.
- 3.6.5 The Council offers leaflets and posters in different languages (and offers translation services if necessary) for the performance of its functions. The service endeavours to be resourced to ensure equality of access to information.

Training courses for Level 2 and Level 4 Health and Safety qualifications as well as Manual Handling and Risk Assessment are now provided, and a Health and Safety Handbook as been produced for local distribution.

3.7 Monitoring

- 3.7.1 A swimming pool monitoring programmed based upon risk, using SMART sampling and a detailed assessment of pool management systems will be exercised throughout the year. The need for provision of further training/information for local pool operators will be explored, with a view to promoting safety and health awareness.

SECTION 4 SERVICE DELIVERY

4.1 Enforcement

- 4.1.1 Enforcement (or the fear of enforcement) is an important motivator for rogue employers. Evidence confirms that enforcement is an effective means of securing compliance and promoting self-compliance. We will work in partnership with the HSE, other enforcement agencies, regulators and stakeholders to secure proportionate compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health and safety and welfare. The scope of these activities will continue to be evidence based and is clearly set out in the Council's enforcement policy statement.

4.2 Staff Resources

- 4.2.1 The S18 Standard requires the Council to have sufficient capacity to undertake our statutory duties. Exeter City Council Environmental Health Services, Commercial Section, is split into 2 districts. Each district is allocated to a 2 full time equivalent District EHO on all functions relating to the Commercial Section.
- 4.2.2 The Council's Principal Health and Safety Officer is also a very experienced and specialist officer for Health and Safety and will be available to the team for specialist advice on the health and safety function with the Commercial team.
- 4.2.3 All officers in the Commercial Section will undertake some health and safety duties along with their other functions which include food safety, training, health initiatives, some licensing duties and infectious disease control.
- 4.2.5 The staff resources allocated to the functions is currently deemed adequate to fulfil the Council's duties. However, it is likely the pattern of employment will change during the year and resource allocation will require regular review. As in 2009/10, officers will vary their approach to the health and safety inspection programme to enable them to meet Performance Indicators by targeting resources on high-risk premises and national priorities

4.3 Staff Skills

- 4.3.1 The Section has a procedure for authorisation of officers and only trained and competent staff will be able to undertake full health and safety duties. The authorisation, and hence action they can take, for each officer will reflect their personal skills. As part of the Council's Investors in People programme all staff who undertake health and safety duties are subject to an annual appraisal which

identifies training and development needs linked to the health and safety competency matrix. These individual training needs are then linked into the service wide training plan which provides for the priority resourcing of both qualification based training and continuing professional development.

4.3.2 Work toward ensuring full alignment with the competency framework will continue this year.

4.3.3 All commercial officers have recently completed the HSE's RDNA (Regulators Development Needs Analysis) tool, to identify areas where they can benefit from development activities.

4.4 Financial Resources

4.4.1 The Section has a modest budget for equipment, printing and miscellaneous items. The level of the resources allocated to the service will be reviewed annually to reflect the changing nature of the work.

4.5 Consultation with Stakeholders

4.5.1 The Health and Safety at Work etc Act 1974 placed general duties on all employers to protect the health and safety of their employees and those affected by their work activities. Its goal-setting approach makes clear that those who create risks are best able to manage them. We will make clear that effective health and safety management is a collective responsibility in which individuals too must play their part.

4.5.2 Experience shows that many organisations do not contact us. Some may be fearful of contact, which deters them from seeking advice. We will make a special effort to explore new ways to establish and maintain an effective health and safety culture, so that all employers take their responsibilities seriously, the workforce is fully involved and risks are properly managed.

4.5.3 We will aim to demonstrate the moral, business and economic case for health and safety. Appropriate health and safety management is an integral part of effective business management and, we will promote it as an enabler and not a hindrance.

4.5.4 We will explore ways to promote greater access to authoritative health and safety advice and guidance and we will continue to offer advice in the course of our other enforcement activities where appropriate.

4.5.5 The PEHO (post frozen) and EHM monitor the quality and consistency of health and safety enforcement work through the checking of inspection correspondence and all statutory notices.

4.5.6 Customer perceptions of quality are monitored by a post inspection questionnaire, which is sent to each workplace business. The questionnaire requests comments on the inspection process and any dissatisfied business proprietors who identify themselves receive a follow-up telephone discussion and, where necessary, a visit from the PEHO (post frozen) and/or E.H. Manager.

4.5.7 Any formal complaints made against the service are investigated and monitored in accordance with Council's Complaint Policy. Up to the 31 March 2010 no such complaints were received in connection with health and safety enforcement.

- 4.5.8 External verification of quality is actively pursued with a commitment to promote consistency of enforcement through auditing and benchmarking with the Devon CEHO's Health and Safety Group.

SECTION 5

PERFORMANCE

5.1 Targets

5.1.1 Local Performance Indicators for 2010/2011:

- the Environmental Health Service Plan sets an inspection performance target of 100% inspection of high-risk premises; and
- complaints are to be responded to within 5 working days.

5.1.2 There are many performance targets for the service to meet in addition to the requirement to comply with standards issued by the Health and Safety Executive.

5.2 Review of performance 2009/10

- information held on a database is continually reviewed and updated. Data, including premises identified in the district surveys but not allocated inspection frequencies, was entered. All new premises are sent a questionnaire to risk rate them and place them within the inspection programme promptly;
- 100% of inspections due were achieved and a total of 372 (434 in 2008/9) preventative inspections were undertaken;
- 206 (317 in 2008/09) other health and safety visits were undertaken;
- 10 (23 in 2008/09) low-risk premises were engaged by questionnaire and a proportion of these were visited;
- the health and safety information web pages were reviewed, refreshed and updated;
- a stall was manned at the Exeter College Freshers' Fair;
- specific training on a series of health and safety topics was shared with colleagues throughout Devon;
- 3 (3) Manual Handling techniques, courses, 2(1) Risk Assessment courses and 6 (7) Level 2 Awards in Health and Safety courses were delivered to 123 (134) delegates;
- 2 Safety and Health Advice Days (SHADs) were held in Exeter focusing on workplace, transport, tyre and exhaust premises;
- we helped in the organisation of a series of SHADs promoted in the county and provided speakers at the venues;
- we piloted the Safer Workplace Better Business pack produced by the Devon CFHO Health and Safety sub-group, which the HSE are now interested in adopting nationwide;

- we reviewed and changed the Self Assessment questionnaires for low risk premises;
- we reviewed the sampling arrangements for swimming pools;
- we assisted the HSE in the investigation of a serious local scaffold collapse incident;
- the local policy relating to skin piercing achieved national acclaim and recognition in professional journals;
- the Principal EHO (Health and Safety) retired after 20 years service to the Council. Prior to his departure he attended meetings of the task and finish group reviewing LAC 67/1 on Priority Planning in Health and Safety; contributed to the SW Work Related Death Liaison Group; continued to support the long standing Lead Authority Partnership with Clarks International in relation to their national shoe shop chain, which has now been terminated;
- the newly revised Health and Safety Handbook was distributed. It was funded entirely by advertising. Distribution was achieved at initial contact with new businesses, City Council run training courses; preventative inspections and SHAD type initiatives. (The page content of the handbook will appear on the Council's website;)
- two businesses were prosecuted for non-compliance with Health & Safety legislation and proceedings are likely to be commenced for one other.

SECTION 6

ACTION PLAN FOR 2010/11

1. Collate feedback from businesses and use data to inform consultation process and develop a business newsletter.
2. Participate in the development of the competency framework.
3. Complete the agreed quota of targeted risk based inspection programme (re A.B1-B3) for 2010/11 focussing on the topic priorities.
4. Implement the Enforcement Management Model and review procedures to reflect Health and Safety Commission requirements.
5. Examine adoption of Dorset's "Work-well" model for health and safety regulators. This will include exploring the benefits of closer partnership working with other EAs and stakeholders to make best use of joint resources to maximise our impact on local, regional and national priorities.
6. Continue the low risk inspection strategy by:
 - 1) Proactively visiting a residual proportion of low risk premises
 - 2) Producing an annual newsletter
 - 3) Continuing self-audit questionnaires for low risk premises until revised guidance is issued, when this approach will be reviewed

- 4) Review the arrangements for achieving target PIs and amend the policy if necessary
7. Work to implement legislation to reduce occupational exposure to tobacco smoke.

SECTION 7

Health and Safety Enforcement Policy

Introduction

The Health and Safety Enforcement Policy is based upon the model developed by the Health and Safety Executive in association with LACORS. As a regulator, the Council's primary purpose is to assist businesses in preventing work-related accidents and ill-health. This is generally achieved through inspections and a range of proactive measures including stakeholder engagement and the provision of information and advice.

Investigating complaints, accidents and ill-health is important in improving standards and ensuring compliance; it also provides the basis for enforcement action to secure justice. Enforcement has three main objectives:

- to compel responsible parties to take immediate action to reduce risk;
- to engender compliance with the law;
- to ensure those who breach health and safety requirements or fail in their responsibilities are held to account for their actions.

EXETER CITY COUNCIL HEALTH AND SAFETY ENFORCEMENT POLICY

1. INTRODUCTION

This document is to let you know how the Council enforces health and safety legislation. It will also tell you what to expect from enforcement officers when they visit your business, and what guides them when carrying out inspections and dealing with breaches in the law.

2. AIM

2.1 The aim of the Council's Enforcement Policy is to ensure that duty holders manage and control risks effectively thus preventing harm. In particular our policy is to:

- ensure that duty holders take action to deal immediately with serious risks;
- promote and achieve sustained compliance with the law; and
- ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts in the circumstances set out later in this policy.

- 2.2 The term "enforcement" has a wide meaning and applies to all dealings between the Council and those on whom the law places duties (employers, the self-employed, employees and others).
- 2.3 The Council believes in firm but fair enforcement of health and safety law in line with Health and Safety Executive's (HSE's) Enforcement Policy Statement. This is informed by the principles of proportionality in applying the law and securing compliance, consistency of approach, targeting of enforcement action, transparency about how we operate and what those regulated may expect, and accountability for our actions. These principles will apply both to enforcement in particular cases and to our management of enforcement activities as a whole and are explained more fully in our Principles of Enforcement document (Annex 1).
- 2.4 The Council places great importance on the consistent use of enforcement action and does not measure itself by the quantities of enforcement action it takes and so does not set targets. The Council does not take enforcement for enforcements' sake. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be appropriate, or to assist such claims.
- 2.5 We have a range of tools at our disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Many of our dealings are informal e.g. offering duty holders information and advice. Where appropriate our officers may also serve improvement and prohibition notices and initiate prosecution.
- 2.6 The decision to prosecute will have regard to the evidential and public interest tests set down in England and Wales by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution will go ahead unless the prosecutor finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.
- 2.7 Where circumstances warrant it and the evidence to support a case is available we will prosecute without prior warning or recourse to alternative sanctions.
- 2.8 Subject to the two tests, circumstances where we will normally prosecute, or recommend prosecution, following an investigation or other regulatory contact are where:
- death was a result of a breach of the legislation;
 - the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
 - there has been reckless disregard of health and safety requirements;
 - there have been repeated breaches which give rise to significant risk, or persistent and significance poor compliance;
 - work has been carried out without, or in serious non-compliance with, an appropriate licence or safety case;
 - a duty holders standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;
 - there has been a failure to comply with an improvement or prohibition notice, or there has been a repetition of a breach that was subject to a simple caution;

- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk; and/or
- inspectors have been intentionally obstructed in the lawful course of their duties.

- 2.9 Where inspectors are assaulted we will also seek police assistance with a view to seeking the prosecution of offenders. Subject to the above we will identify and prosecute individuals if we consider that a conviction is warranted and can be secured. Additionally we will actively consider the management chain and the role played by individual directors and managers. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.
- 2.11 As with prosecution, we will use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. We will use discretion in deciding when to investigate or what enforcement action may be appropriate. Such judgments will be made in accordance the Regulators' Compliance Code and Section 18 guidance (including the Enforcement Policy Statement).
- 2.12 The Health and Safety Executive's national priorities, and those determined at local level, are used to target our activities and resources via our Health and Safety Service Plan. To maintain a proportionate response, most resources available for investigation will be devoted to the more serious circumstances.
- 2.13 Our health and safety team will aim to:
- inspect those premises for which it has enforcement responsibility and investigate accidents and complaints in accordance with the Council's selection criteria policy;
 - rate premises according to risk (which includes confidence in management, health and safety performance) in order to determine the future of future inspections;
 - seek to promote health and safety through advice and guidance, and by the provision of training; and
 - take formal enforcement action, in accordance with the Enforcement Policy Statement, when it is the most appropriate way of dealing with the matter.
- 2.14 Where we can, we will endeavour to make provision for the particular interests of stakeholders. For example we may make visits out of normal office hours but at times when the business is open, or we may arrange for interpreters/translators to be available if particular groups of duty holders do not have English as a first language.
- 2.15 If you wish to discuss or comment on our Enforcement Policy or Service Plan please contact the Environmental Health Manager (Commercial) on 01392 265433.

3. ANNEX 1 – THE PRINCIPLES OF ENFORCEMENT

- 3.1 The Council believes in firm but fair enforcement of health and safety law. This will be informed by the principles of proportionality in applying the law and securing compliance, consistency of approach, targeting of enforcement action, transparency about how we operate and what those regulated may expect, and accountability for our actions. These principles will apply both to enforcement in particular cases and to our management of enforcement activities as a whole.

4. The Purpose of Enforcement

- 4.1 The purpose of enforcement is to:
- ensure that duty holders take action to deal immediately with serious risks;
 - promote and achieve sustained compliance; and
 - ensure that duty holders who breach health and safety requirements, and directors and managers who fail in their responsibilities, may be held to account. This may include bringing the alleged offenders before the courts, in circumstances set out in our Enforcement Policy Statement.

5. The Process of Enforcement

- 5.1 Inspectors use various enforcement techniques to deal with risks and secure compliance with the law, ranging from the provision of advice to enforcement notices.
- 5.2 Enforcement decisions must be impartial, justified and procedurally correct. The Council's Enforcement Policy Statement sets out the approach we follow.
- 5.3 The Health and Safety Executive have developed an Enforcement Management Module (EMM) which provides the Council with a framework for making enforcement decisions that meet the principles in the Enforcement Policy Statement. It captures the issues inspectors consider when exercising their professional judgement and reflects the process by which enforcement decisions are reached.

6. The Purpose of the Enforcement Management Module

- 6.1 The EMM is not a procedure in its own right. It is not intended to fetter inspectors' discretion when making enforcement decisions, and it does not direct enforcement in any particular case. It is intended to:
- promote enforcement consistency by confirming the parameters, and the relationships between the many variables, in the enforcement decision making process;
 - promote proportionality and targeting by confirming the risk based criteria against which decisions are made;
 - be a framework for making enforcement decisions transparent, and for ensuring that those who make decisions are accountable for them; and

- help experienced inspectors assess their decisions in complex cases, allow peer review of enforcement action, and be used to guide less experienced and trainee inspectors in making enforcement decisions.

6.2 The EMM and the associated procedures enable managers to review the decision making process and their inspectors' enforcement actions to ensure the purpose and expectations of the EPS have been met.

6.3 The EMM does not exist in isolation. It is supported by quality procedures which address, amongst other things, the selection and investigation of accidents.

7. Enforcement Tools

7.1 Inspectors have a range of tools at their disposal to seek compliance with the law and to ensure a proportionate response to criminal offences. Where appropriate they may:

- serve improvement and prohibition notices;
- issue simple cautions;
- initiate prosecution.

Simple cautions will not be used:

- as a let off;
- where there are some mitigating circumstances;
- where there is doubt about the public interest; or
- where either the prosecutors' office or the court are too busy.

8. Complaints Procedure

8.1 Complaints are dealt with by our standard complaints procedure.

9. The Procedures and Principles of Enforcement

9.1 Proportionality

9.2 Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by the Council to achieve compliance should be proportionate to any risks to health and safety or to the seriousness of any breach, which includes any actual or potential harm arising out of a breach of law.

9.3 Some health and safety duties are specific and absolute. Others require action so far as is reasonably practicable. We will apply the principle of proportionality in relation to both kinds of duty.

9.4 Deciding what is reasonably practicable to control risks involves the exercise of judgment. In the final analysis, it is the courts that determine what is reasonably practicable in a particular case. Where duty holders must control risks so far as is reasonably practicable, we will, when considering protective measures taken by them, take account of the degree of risk on the one hand, and on the other the cost, whether

in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is a gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.

- 9.5 We will expect relevant good practice to be followed. Where, in particular cases, this is not clearly established, health and safety law effectively requires duty holders to assess the significance of the risks to determine what action needs to be taken. Some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences. Conversely some risks may be so small that spending more to reduce them would not be expected.

10. Targeting

- 10.1 Targeting means making sure that contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled, and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it whether employers, or others.
- 10.2 The Council has a system for prioritising contacts according to the risks posed by a duty holder's operations, and to take account of the hazards and the nature and extent of the risks that arise. The duty holder's management competence is an important factor. Certain very high hazard sites will receive regular inspections so that we can give public assurance that such potentially serious risks continue to be effectively managed.
- 10.3 Enforcement action will be directed against duty holders who may be employers in relation to workers or others exposed to risk, the self employed, the owner of the premises, or the supplier of the equipment, or the designer or client of the project. Where several duty holders have responsibilities we will take action against those who are primarily in breach.
- 10.4 When our inspectors issue improvement or prohibition notices or prosecute or issue simple cautions, we will ensure that a senior officer of the duty holder concerned, at board level, is also notified.

11. Consistency

- 11.1 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- 11.2 Duty holders managing similar risks expect a consistent approach from us in the advice tendered, the use of enforcement notices etc, decisions on whether to prosecute, and in the response to incidents.
- 11.3 In practice consistency is not a simple matter. Our enforcement officers are faced with many variables: the severity of the hazard, the attitude and competence of management, the duty holder's accident history. Decisions on enforcement action are discretionary, involving judgment by the officer. The Council has arrangements in place to promote consistency in the exercise of discretion, and these include liaison arrangements with the other enforcing authorities and the Health and Safety Executive.

12. Transparency

- 12.1 Transparency means helping duty holders to understand what is expected of them and what they should expect from us. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. That means

distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

- 12.2 It also involves us in having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements have regard to legal constraints and requirements.
- 12.3 We will tell you what to expect when an inspector calls and what rights of complaint are open to you. All our health and safety inspectors are required to issue the leaflet '*What to expect when a health and safety inspector calls*' whenever they visit. This publication explains what employers and employees and their representatives can expect when a health and safety inspector calls at a workplace. In particular:
- when inspectors offer duty holders information, or advice, face to face or in writing, including any warning, they will tell the duty holder what to do to comply with the law, and explain why. If asked, Inspectors will confirm any advice in writing and distinguish legal requirements from best practice advice;
 - in the case of improvement notices, the inspector will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when;
 - in the case of a prohibition notice, the notice will explain why the prohibition is necessary.

13. Accountability

- 13.1 Regulators are accountable to government, citizens and Parliament for their actions. This means that we have policies and standards (such as the four enforcement principles above) against which we can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.
- 13.2 We have a complaints procedure. Where a notice is served there is a right of appeal to an Employment Tribunal.

14. Investigation

- 14.1 As with prosecution, the Council will use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. The Health and Safety's national priorities, and those agreed at local level are used to target our activities and resources via our Health and Safety Service Plan.
- 14.2 To maintain a proportionate response, most resources available for investigation will be devoted to the more serious circumstances. It is neither possible nor necessary for the purposes of the Health and Safety at Work etc. Act to investigate all issues of non compliance with the law that are uncovered in the course of planned inspection, or reported events.
- 14.3 In conducting our investigations we will take account of any likely complimentary or shared enforcement roles, e.g. where the HSE has jurisdiction over some of the activities of a duty holder and we have jurisdiction over the rest of the activities. We will also refer relevant information to other regulators where there is a wider regulatory interest e.g. the HSE or to the Primary Authority of a duty holder within the Local better Regulation Office's Primary Authority Scheme.

- 14.4 We will carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so, for example because the police consider the cause to have been suicide.
- 14.5 A more detailed policy on investigating reportable workplace accidents and ill health is detailed at Appendix A.

15. Prosecution

- 15.1 We will use discretion in deciding whether to initiate a prosecution. Our primary purpose is to help prevent harm, and while prosecution can draw attention to the need for compliance with the law, other approaches to enforcement can often promote health and safety more effectively.
- 15.2 The decision to prosecute will have regard to the evidential and public interest tests set down in England and Wales by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution will go ahead unless the prosecutor finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.
- 15.3 Whilst our primary purpose is to ensure that duty holders manage and control risks effectively thus preventing harm, prosecution is an essential part of enforcement. Where an investigation has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors that it is in the public interest to prosecute then that prosecution should go ahead. Where circumstances warrant it and the evidence to support a case is available we will prosecute without prior warning or recourse to alternative sanctions.
- 15.4 Subject to these two tests we will normally prosecute, or recommend prosecution, where following an investigation or other regulatory contact, the following circumstances apply. Where:
- death was a result of a breach of the legislation;
 - the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
 - there has been reckless disregard of health and safety requirements;
 - there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
 - work has been carried out without or in serious breach of an appropriate licence;
 - a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;
 - there has been a failure to comply with a written warning or an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a formal caution;
 - inspectors have been intentionally obstructed in the lawful course of their duties;
 - false information has been wilfully supplied, or there has been intent to deceive.

We will also consider prosecution, or consider recommending prosecution where, following an investigation or other regulatory contact, the following circumstances apply:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law;
- a breach that gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

15.5 Where inspectors are assaulted we will also seek police assistance with a view to seeking the prosecution of offenders.

15.6 Subject to the above we will identify and prosecute individuals if we consider that a conviction is warranted and can be secured. Additionally we will actively consider the management chain and the role played by individual directors and managers. We will take action against them where it can be shown that the offence was committed with their consent or connivance or to have been attributable to neglect on their part. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

16. Publicity

16.1 We will 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.

16.2 We will also consider drawing media attention to factual information about charges that have been laid before the courts, having due regard to publicity that could prejudice a fair trial. We will also consider publicising any conviction that could serve to draw attention to the need to comply with health and safety requirements, or deter anyone tempted to disregard their duties under health and safety law.

17. Action by the Courts

17.1 Where appropriate we will draw the court's attention to all the factors that are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given some guidance on some of the factors that should inform the courts in health and safety cases (R v F. Howe and Son (Engineers) Ltd [1992] 2 All ER, and subsequent judgments).

18. Representation to the Courts

18.1 In cases of sufficient seriousness, and when given the opportunity, we will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make we will have regard to Court of Appeal guidance; the Court of Appeal has said "In our judgment magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence".

19. Death at Work

- 19.1 Where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the Police, Coroners and the Crown Prosecution Service and if they find evidence suggesting manslaughter, pass it on to the Police or where appropriate the CPS. If the Police or the CPS decide not to pursue a manslaughter case, we will bring a health and safety prosecution if that is appropriate.
- 19.2 To ensure decisions on investigation and prosecution are co-ordinated, the HSE, the Association of Chief Police Officers and the CPS have jointly agreed and published '*Work Related Deaths: A Protocol for Liaison*'. Exeter City Council has agreed that it should take account of the Protocol when responding to work-related deaths.

20. Penalties for Health and Safety Offences

The Health and Safety at Work etc. Act 1974 (HSWA), section 33 (as amended) sets out all of the offences and maximum penalties under health and safety legislation.

- **Failing to comply with an improvement or prohibition notice, or a court remedy order** (issued under HSWA sections 21, 22 and 42 respectively)
 - lower court maximum: £20,000 and/or 12 months' imprisonment;
 - higher court maximum: Unlimited fine and/or 2 years' imprisonment.
- **Breach of sections 2-6 of the HSWA**, which set out the general duties of employers, self-employed persons, manufacturers and suppliers to safeguard the health and safety of workers and members of the public who may be affected by work activities
 - lower court maximum: £20,000 and/or 12 months' imprisonment;
 - higher court maximum: Unlimited fine and/or 2 years' imprisonment.
- **Most other breaches of the HSWA, contravening licence requirements and breaches of all health and safety regulations under the Act.** These impose both general and more specific requirements, such as requirements to carry out a suitable and sufficient risk assessment or to provide suitable personal protective equipment. Licensing requirements apply to high hazard activities such as nuclear installations and asbestos stripping.
 - lower court maximum: £20,000 and/or 12 months' imprisonment;
 - higher court maximum: Unlimited fine and/or 2 years' imprisonment.
- **On conviction of directors for indictable offences in connection with the management of a company** (all of the above, by virtue of HSWA sections 36 and 37), the courts may also make a disqualification order (Company Directors Disqualification Act 1986, sections 1 and 2). The Courts have exercised this power following health and safety convictions. Health and safety inspectors draw this power to the Court's attention whenever appropriate
 - lower court maximum: 5 years disqualification;
 - higher court maximum: 15 years disqualification.

21. APPENDIX A – ACCIDENT INVESTIGATION

21.1 It is the policy of the Council to investigate reportable accidents under the Reporting of Injuries, Disease, and Dangerous Occurrences Regulations 1995 according to the criteria set out below.

21.2 An initial assessment of the incident will be made and a decision taken on investigation within 3 working days.

21.3 Accidents will be investigated in accordance with the principles of proportionality, consistency, targeting, transparency and accountability.

21.4 The purpose of investigation is to:

- identify immediate and underlying causes;
- ensure the duty holder takes appropriate remedial action to prevent reoccurrence;
- evaluate compliance with the relevant statutory provisions; and
- apply the principles of the Enforcement Management Model and take enforcement action if appropriate.

Investigations will be:

- continued only so far as they are proportionate to the achievement of the objectives set for them;
- conducted and/or supervised by staff who are competent;
- provided with adequate resources and support, including information, equipment and staffing;
- conducted so that efficient and effective use is made of the resources committed to them;
- timely, so far as this is within the control of the investigating inspector; and
- subject to suitable management procedures for monitoring the conduct and outcome of investigations.

21.5 Factors to determine whether an investigation continues to be proportionate:

- Public expectation, for example, where there has been a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries;
- The potential (taking into account reasonable foreseeability) for a repetition of the circumstances to result in a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries either in the activities of a specific duty holder or within industry generally;
- the extent to which the available evidence allows conclusions as to causation to be drawn and supported with sufficient certainty, including conclusions as to responsibility for alleged breaches of relevant legislation;

- the extent to which the resources needed for the investigation are disproportionate to the hazard(s) or risk(s); and
- the prevalence of the event, either in the activities under the control of a specific duty holder, or in an industry sector generally.

22. Criteria for Investigating RIDDOR Reports

Mandatory Investigations

22.1 All fatalities arising out of, or in connection with work activities whether it is to an employee or a member of the public. This excludes suicides or deaths from natural causes.

22.2 The following major injuries, as defined in the Reporting of Injuries, Diseases and Dangerous Occurrence Regulations (RIDDOR), to all persons, including non-employees, irrespective of the cause:

- all amputations of digit(s) past the first joint;
- amputation of hand/arm or foot/leg;
- serious multiple fractures;
- crush injuries leading to major organ damage;
- serious head injuries involving loss of consciousness;
- burns or scalds greater than 10% of the body;
- permanent blinding of one or both eyes;
- any degree of scalping;
- asphyxiations.

22.3 All reported cases of disease which meet the criteria for reporting under RIDDOR, except those arising from circumstances/situations which have already been investigated.

Non Investigation of a Mandatory Incident

22.4 Grounds for not investigating incidents that would normally be investigated include:

- impracticability of investigation e.g. the unavailability of witnesses or evidence;
- no reasonably practicable precautions available to prevent the incident or its recurrence;
- investigating the accident would mean that the Council was acting ultra vires;
- conflict of interest between the Council as regulator and duty holder, in which case the appropriate enforcing authority will be notified;
- inadequate resources due to other priorities (must be referred to Environmental Health Manager or equivalent.)

Discretionary Investigations

22.5 Those incidents not falling into the above criteria for mandatory investigation may be investigated at the Council's discretion, taking into account the following factors:

- any incident which relates to the HSE's current strategic priorities which has not caused a RIDDOR defined major injury or one which arises from a specific health

and safety initiative that may be contained within the Council's Health and Safety Service Plan;

- the poor track record of the duty holder and whether there is a history of similar events;
- the incident has the potential for high public profile/media attention or has received considerable media attention leading to reputational risk through inaction/perceived inaction;
- the incident may give rise to complaints. Depending on circumstances, this should be dealt with as a normal complaints procedure and not necessarily require a full investigation;
- any incident identified as being useful for enhancing sector good practice/technical knowledge.

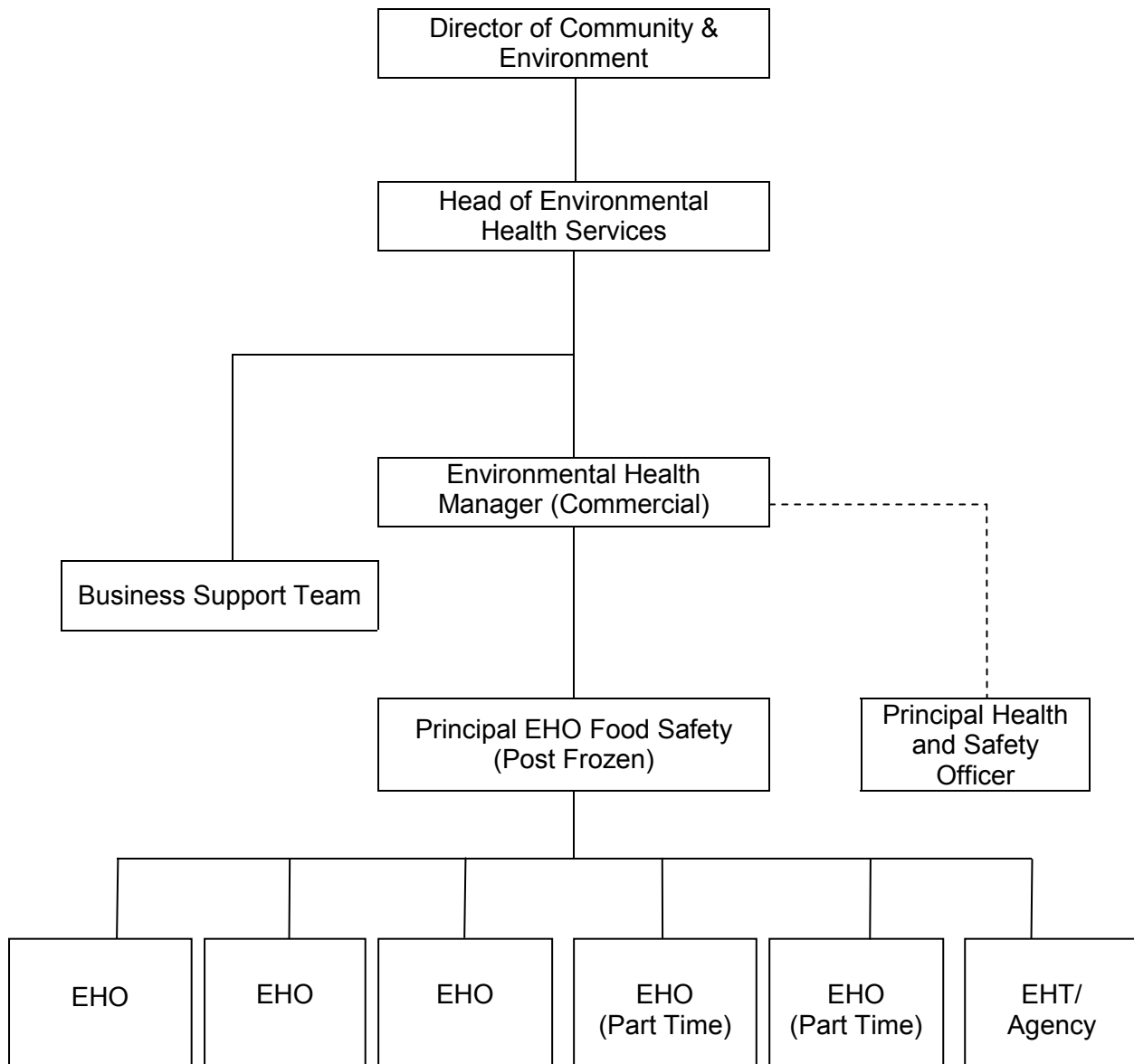
23. APPENDIX B - COMPLAINTS

23.1 The Council has a policy on investigating complaints / requests for service. We will make an initial response within 5 working days of the complaint / request for service being made to the Council. In deciding whether to investigate we will take into account the following factors:

- the severity and scale of actual or potential harm, or the high potential for harm arising from an event;
- the seriousness of any potential breach of the law;
- the track record of the duty holder;
- the enforcement priorities of the Council;
- the practicality of achieving results;
- the wider relevance of the event including serious public concern.

In any case this policy will be interpreted in the overall context of the Enforcement Policy.

APPENDIX 1a: THE OFFICER STRUCTURE IN RESPECT OF THE HEALTH & SAFETY ENFORCEMENT SERVICE



APPENDIX 1b: FLOW DIAGRAM SHOWING THE COMMITTEE STRUCTURE FOR THE COUNCIL

