

ILFRACOMBE HARBOUR

ENFORCEMENT & PROSECUTION POLICY

Version 1.0

Adopted by Harbour Board: Draft

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1.0 DOCUMENT CONTROL

This plan is subject to a biannual (2 Yearly) review and periodic amendment as required

Major changes will be issued as a new version with all minor amendments to that version annotated by a decimal point e.g. V2 will become V2.1, V2.2 etc.

Amendment proposals should be sent to the Harbour Master using the following means:

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Phone: 01271 862108

Post: Harbour Masters Office, The Quay, The Pier, Ilfracombe EX34 9EQ

1.1 RECORD OF REVIEW & AMENDMENTS

Review (R) /Amendment (A)	Date	Description of changes

2.0 ENFORCEMENT POLICY

2.1 INTRODUCTION

The Harbour Authority for Ilfracombe Harbour is North Devon Council (NDC) and as such are responsible under the Port Marine Safety Code for the effective enforcement of its regulations, which are adopted in order to assist in managing the safety of navigation within the port. In this Policy, enforcement comprises the promulgation of regulation and guidance, effective surveillance, incident investigation, and where appropriate formal warning and prosecution.

Our policy is based on education in the first instance and generally only reverts to prosecution for repeat offenders, for offences bringing significant risk of serious injury or loss of life or for when users threaten or abuse our Harbour Officers and Staff [The Harbour Team]. Where appropriate, and where empowered to do so, the Harbour Authority will prosecute offenders for committing criminal offences, including those set out in the Merchant Shipping Act 1995 and in ancillary regulations.

2.2 AIMS

The Harbour Authority:

- Seeks to achieve compliance in a fair, consistent, proportional, transparent and targeted manner;
- Has a clear, open and helpful approach to enforcement;
- Targets enforcement resources at areas of highest risk, including non-compliant Harbour businesses and individuals;
- Conducts itself in a way that supports those they regulate to comply and improve;
- Acts in accordance with national guidance and standards, and other supplementary local policies.

2.3 GUIDING PRINCIPLES

The Harbour Authority shall adhere to these principles when undertaking its regulatory & enforcement role:

1. 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;
2. Decisions will not be affected by improper or undue pressure from any source;
3. The Harbour Authority believes that the majority of individuals and businesses wish to comply with legal requirements, and should be assisted to do so;
4. We will give positive feedback wherever possible, to encourage and reinforce good practices;
5. The Authority's actions will be proportionate to the scale, seriousness and intention of any non-compliance;

6. 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;
7. We will provide a variety of opportunities for those we regulate to engage with us;
8. This policy is built around a process of escalation. Except in the most serious cases such as a serious breach or where advice/warnings have not been heeded, adequate opportunity will be given to rectify non-compliance before formal legal action commences;
9. 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;
10. 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 Code);
11. Regard shall be had to the Council/Harbour Authorities own policies in respect of Customer Care, Equal Opportunities, etc.
12. Maintain through regular reviews, a regulatory framework, which is integrated with relevant national legislation and includes local regulation (i.e., Bylaws & Special Directions) resulting from risk assessment, or as otherwise made necessary;
13. Develop and maintain effective enforcement procedures, which comply with relevant national legal requirements and guidelines;
14. Develop and maintain effective investigation procedures for use in the event of a navigational incident, which support the Harbour Authorities enforcement procedures, but also meet the requirements of the Marine Safety Management System in respect of identifying and promulgating any 'lessons learned';
15. Ensure that all team members involved in an incident investigation, or who are required to follow The harbour Authorities enforcement procedures, receive effective and relevant training;
16. Maintain an effective surveillance and spot check regime, to monitor compliance with, and detect breaches of, relevant national and harbour regulations;
17. Respond to breaches of regulation, where justified by the evidence and other circumstances, by the use of formal warnings and legal prosecution; and
18. When bringing prosecutions, observe the requirement of the Crown Prosecution Service and evidential Codes in so far as appropriate.

2.4 CLEAR STANDARDS

1. All matters relating to enforcement and regulation will be dealt with promptly;
2. The duly appointed Harbour Authority investigating Officers will announce themselves on arrival in all instances even if the persons are known to them and show identification. Officers will always explain the purpose of their visit/enquiry;
3. 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;
4. 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.
5. Officers cannot act as consultants or legal advisors to individuals or businesses, but are permitted to discuss general issues or matters of specific enforcement with the aim of assisting or guiding compliance.
6. 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.
7. Officers will provide advice in a clear and simple manner and where any corrective or remedial 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 clear evidence of any action as stated in 2.7 will be held on file.
8. 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.);
9. 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;
10. 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 [<https://northdevon.gov.uk/council/feedback-complaints-whistleblowing-and-insurance/complaints-procedure/>]

2.5 CONSISTENCY

1. Consistent enforcement action is desirable, but uniformity in approach would not always recognise individual circumstances. We will encourage consistency of approach by:
2. Providing appropriate training and supervision of the Harbour Team;
3. Ensuring compliance with the standards set out in this policy;
4. Recognising that we should not normally take formal enforcement action or prosecution in the case of minor infringements;
5. Recognising that in some situations, we have no legal discretion but to pursue enforcement action;
6. 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.

2.6 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.

Formal enforcement procedures will:

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

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

1. A compliance breach or breaches would pose a serious risk; and
2. There is a high likelihood of non-compliance.

2.7 ENFORCEMENT ACTION

Enforcement action can take the form of;

1. A warning – by way of education, given by an authorised member of the harbour staff should they observe a contravention of the bylaws.
2. A written warning explaining the way in which a bylaw has been contravened and the implications should the offender re-offend. This is not a caution for the purposes of criminal records.
3. Suspension or revocation of a licence issued in accordance with the bylaws or such other licences issued by the Harbour Authority E.g. Mooring licences
4. Prosecution – as an ultimate sanction.

Or a combination of any of the above.

2.8 MONITORING

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

1. Opportunities for businesses and members of the public to comment on the policy;
2. Feedback welcomed through the Ilfracombe Harbour website or NDC Feedback system;
3. Periodic consultation with harbour stakeholders, e.g. the Harbour Forum;
4. Though open discussion with the public and elected members as part of the Harbour Authorities cycle of business.

2.9 WORKING WITH OTHERS

The Harbour Authority works closely with other Council services to provide a streamlined service.

We are part of a much wider regulatory system in North Devon and have good working relationships with other regulators such as the Maritime & Coastguard Agency, Environment Agency, Police, Border Force etc. and this enables us to have a much more joined up and consistent service. This includes sharing information and data on compliance and risk, where the law allows, to help target regulatory resources.

3.0 PROSECUTION POLICY

Any 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:

1. There is sufficient admissible and reliable evidence to provide a realistic prospect of conviction; and
2. 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:

1. Unlawful acts or omissions have seriously or repeatedly compromised the safe and efficient use of the harbour/harbour estate or the environment;
2. The offending created/posed a risk to public safety or to the environment;
3. Through blatant action or inaction risks causing pollution have been exacerbated;
4. Where there is disregard for safe practice;
5. The offence involves a failure to comply in full or in part with a statutory notice, including a Harbour Master's direction;
6. The offender has relevant previous convictions or has been cautioned for a relevant matter;

7. 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;
8. 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;
9. The offence, whether or not serious in itself, is widespread in Ilfracombe Harbour;
10. 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.

3.1 LEGAL PROCEEDINGS DECISION SHEET

	For Prosecution (= -1)	Against Prosecution (=+1)	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 the harbour authority 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 cooperative with the investigation	
11	Attempt to cover up the true facts	Attitude open and honest.	
12	Harbour Authority/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	Harbour Authority identified problems on a previous occasion	Harbour Authority did not identify problems on a previous occasion	
		Total	

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:

1. The protection of employees or members of the public;
2. To remedy deficiencies due to incompetent or irresponsible activities.