

East Lothian
Council

Environmental Health

Service Charter

2016

Contents

1. Introduction	3
2. Objectives of the Charter	4
3. What activities does it apply to?	5
4. Service Standards	7
5. Enforcement options available	9
6. Principles of Good Regulation	10
7. When we will submit a report to the Procurator Fiscal	12
8. How do we know we are complying with the Charter?	13
9. Help us improve	14
10. If you are unhappy with our Regulatory activities	15

Appendix A: Environmental Health Service Charges

Appendix B: Environmental Health Service Enforcement Guidance

Appendix C: Record for deviating from the Service Charter

1. Introduction

This Service Charter sets out how the regulatory activities of the Environmental Health Service of East Lothian Council will be undertaken. In some organisations, this type of document would be known as an “enforcement policy”. The Charter explains our regulatory activities, the steps we will take to ensure we meet our Charter commitments, and what actions are open to you if you do not think we are meeting the terms of the Charter.

Together with the requirement to comply with statutory enforcement duties placed on the Council by legislation, a fundamental purpose of our enforcement activity is to contribute to the Council’s ambition of East Lothian being a prosperous, safe and sustainable place with a dynamic and thriving economy that will allow our people and communities to flourish.

Regulation is an important part of the context within which businesses operate. Effective and well-targeted regulation by the Council plays an important role in ensuring the economic well-being of East Lothian and Scotland as a whole. It protects the vulnerable and the environment. It promotes equality, and helps raise the standards of service.

It provides the platform for fair competition, giving reassurance to consumers and businesses alike. As such, regulation is a key enabler to economic activity. Regulatory services are a valuable source of advice for businesses on good practice, and how to comply with the law. However, where regulations are over-zealously implemented or enforced, they can stifle innovation and economic growth, and produce other unintended consequences.

At a national level, the Government is driving forward a Better Regulation agenda. This agenda is about finding more effective ways of designing and enforcing regulation, without placing unnecessary burdens on those who are regulated. It is about streamlining bureaucracy in order to support increased productivity and prosperity and contribute further to sustainable economic growth.

In order to ensure that the Environmental Health Service meets Better Regulation aspirations – to maximise regulatory outcomes while minimising burdens on businesses and other regulated entities – we have prepared this Charter.

The Charter sets out the key principles under which enforcement officers will seek to achieve compliance with the civil and criminal legislation enforced by the Environmental Health Service. It is intended to guide enforcement officers in deciding what course of action to take when discovering infringements. It also seeks to ensure consistency in the decision making process regarding the enforcement actions taken by our officers.

The Charter is designed to help businesses and individuals understand our objectives and methods for achieving compliance, as well as the criteria considered when deciding what the most appropriate response is to a breach of legislation. The Charter aligns with the Scottish Regulators’ Strategic Code of Practice, as required by Section 5(5) of the Regulatory Reform (Scotland) Act 2014. The principles of this Charter satisfy this Authority’s requirement to document a Food Law Enforcement Policy, as required by the Food Law Code of Practice (Scotland).

Our approach to enforcement will be underpinned by the five principles of better regulation: **proportionality, accountability, consistency, transparency** and **targeted only where necessary**, plus a sixth principle of taking a **timely** approach.

2. Objectives of the Charter

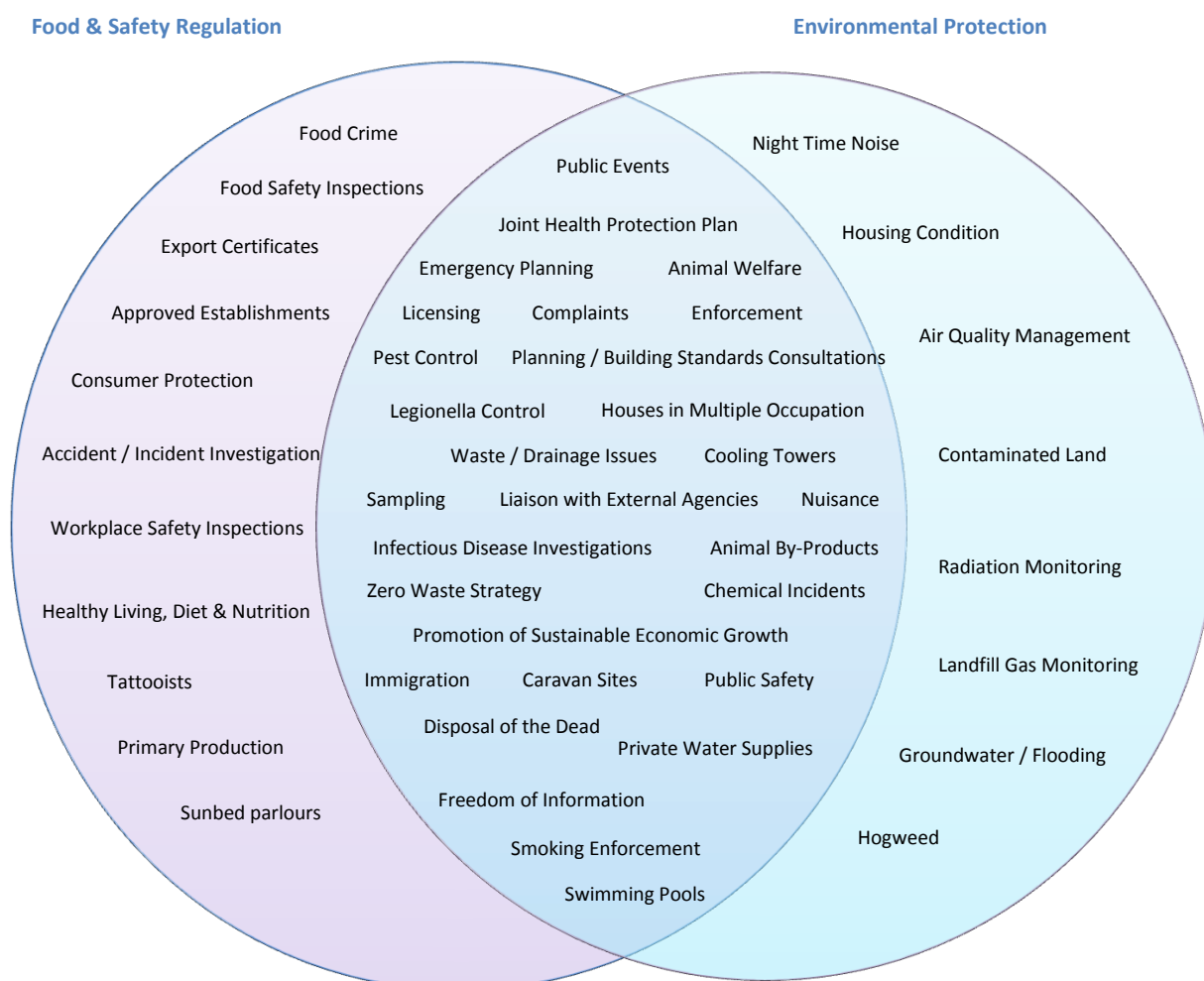
Through the Charter we will:

- (1) Carry out our enforcement activities in a proportionate, accountable, consistent, transparent, targeted and timely way.
- (2) Advise businesses and individuals who might be affected by our regulatory activities, what our enforcement approach is in order to build understanding between our regulatory teams and the local community.
- (3) Inform our own staff what our enforcement standards are, both on induction to the Service, and during their enforcement careers.
- (4) Establish a clear framework for our officers, to ensure they are acting in a fair, consistent and reasonable manner when they take enforcement action.
- (5) Monitor our actual performance against what we say we should be doing, so that any variances from good practice are spotted early, and corrected.
- (6) Contribute to the Council's ambition of East Lothian being a prosperous, safe and sustainable place with a dynamic and thriving economy that will allow our people and communities to flourish.

3. What activities does it apply to?

The Environmental Health Service of East Lothian Council is a holistic public health service with specialist workstreams. This is illustrated in the diagram below:

Environmental Health Service - Workstreams



The priorities of the Environmental Health Service are:

- Protect and promote public health and safety
- Protect the environment from harm
- Support the local economy and help it grow and prosper

The primary function in relation to Food & Safety Regulation is the carrying out of statutory obligations and duties in relation to the Council's responsibilities to regulate activities in respect of:

- Food Hygiene
- Food Standards (composition, labelling etc)
- Communicable disease and food poisoning
- Workplace Safety
- Licensing of certain activities
- Private Water Supplies
- Smoking in public places

The primary function in relation to Environmental Protection is to carry out statutory obligations and duties in relation to the potential adverse effects of the environment on public health. This is achieved by monitoring aspects of the environment and regulating and enforcing a variety of legislation. The diverse areas of environmental factors which this team regulate include:

- Public Health
- Air Quality
- Statutory Nuisance, including Night Time Noise
- Pollution
- Contaminated Land
- Pest Control
- Housing Standards and Grants
- Licensing of certain activities
- Public Health Funerals

Where the consequences of enforcement activity leads to additional costs being incurred by East Lothian Council, it will seek to recover these costs as appropriate from the individual or business responsible.

Most of our functions are fulfilled as part of East Lothian Council's statutory obligations and duties, however some of our activities are discretionary and, as such, can attract charges in order to recover costs incurred. A list of our charges can be found in Appendix A.

4. Service Standards

The Environmental Health Service embraces the philosophies of the Council in order to contribute to the achievement of the ambitions and aspirations of East Lothian's 2020 Vision, the Single Outcome Agreement and the Council Administration, as detailed within the Council Plan 2012-2017. In doing so, the Service contributes to the Council's ambition that *"East Lothian should be a prosperous, safe and sustainable place with a dynamic and thriving economy that will allow our people and communities to flourish."*

In this regard, we carry out all our activities in a way that supports those we regulate, and we ensure that information and guidance is available to help statutory obligations to be met. We provide advice that is tailored to particular needs and circumstances.

You can expect, and will receive, an efficient and professional service from us.

Our team of Officers will:

- Be courteous and polite
- Always identify themselves by name and provide contact details
- Seek to gain an understanding of how your business operates and the pressures you face
- Provide details of how to discuss any concerns you may have
- Agree time-scales, expectations and preferred methods of communication with you
- Ensure that you are kept informed of progress on any outstanding issues

We want to work with you to help your business grow and develop. It's important that you can come to us for advice. Our aim is to help you solve any problems you may be having, rather than taking enforcement action against you. We can:

- Provide advice that supports compliance and that can be relied on
- Provide advice that is appropriate for your circumstances
- Provide clear advice that can be easily understood and implemented
- Distinguish legal requirements from suggested good practice
- Acknowledge good practice and compliance
- Ensure that any verbal advice you receive is confirmed in writing, if requested

No charges are currently made for advice.

When we visit you, an Officer will:

- Explain the reason and purpose of the visit
- Carry their identification card at all times and present it on request
- Exercise discretion in front of your customers and staff
- Be aware of how you approach compliance within your business, and use this information during future interactions with you.
- Provide advice to help you meet your statutory obligations where required
- Provide a written record of the visit

Requests for our service

We respond to requests for assistance that we receive, including requests for advice and complaints about breaches of the law. We will:

- Acknowledge your request in accordance with our target response times
- Tell you when you can expect a substantive response
- Seek to fully understand the nature of your request
- Explain what we may or may not be able to do, so that you know what to expect
- Keep you informed of progress throughout our involvement
- Provide clear advice where appropriate
- Inform you of the outcome as appropriate

Target response times

We have set out standards for the service so that the most serious or immediate problems or requests are dealt with first. We aim to meet the following targets for our initial response:

- serious or extensive public health problems, such as major pollution incidents, serious accidents at work, food poisoning outbreaks, or serious drainage issues: *response on the same working day*
- pest control requests: *response within one working day for rats / mice; within three working days for other pests*
- noise or smoke complaints, housing disrepair, other public health complaints: *response within three working days*
- non-urgent enquiries and requests for general information: *response within ten working days.*

By "response" we mean we will advise you of what action we will take, when and by whom. If we cannot help, we will tell you why.

A Night Time Noise Service operates between 22:00 – 02:00 each Friday and Saturday night. Generally, however, the Environmental Health Service does not offer an out-of-hours response, but we will deal with emergencies such as those listed below as a priority:

- request for assistance by the on-call Consultant in Public Health Medicine
- notification of a fatality at work, under health and safety legislation
- request for assistance from a senior Police Officer
- major emergency incidents (e.g. explosions, chemical leaks), in liaison with the emergency services via the council's emergency planning arrangements.

5. Enforcement options available

Where we identify any failure to meet legal obligations, we will respond proportionately, taking account of the circumstances, in line with the principles of good regulation and our prescribed enforcement guidance.

‘Enforcement action’ includes any action taken by duly authorised enforcement officers aimed at ensuring that businesses or individuals comply with the law. This is not limited to formal enforcement, and includes other ‘enforcement activities’ such as advisory visits, inspection and assisting with compliance. In reaching enforcement decisions, officers will consider all the relevant facts and circumstances.

In general terms, the enforcement actions available include:

- Informal action and advice
- Warning Letter
- Statutory Notice
- Fixed Penalty Notice
- Seizure / Detention
- Refusal / revocation of a licence / registration / approval
- Prohibition
- Closure
- Prosecution report

Where we require you to take action to remedy any failings we will:

- Explain the nature of the non-compliance
- Discuss what is required to achieve compliance, taking into account your circumstances
- Clearly explain any advice, actions required or decisions that we have taken
- Agree timescales that are acceptable to both you and us, in relation to any actions required
- Provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights to appeal
- Explain what will happen next, including any timescales
- Keep in touch with you, where required, until the matter is resolved

All decisions regarding the appropriate enforcement action will have regard to relevant documents, including: East Lothian Council Environmental Health Service Enforcement Guidance (Appendix B), current and relevant statutory guidance, Codes of Practice, the Crown Office publication *‘Reports to the Procurator Fiscal – A Guide for Specialist Reporting Agencies’*, enforcement matrices and the Human Rights Act 1998.

6. Principles of Good Regulation

Proportionality

Our decisions on enforcement activities will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source. We will seek to use a type of enforcement action that is proportionate to the significance of the offence, the level of risk / harm, the impact on communities or the level of financial benefit arising from the offending. For the most serious offending, we will submit a report to the Crown Office and Procurator Fiscal Service (COPFS) for consideration of prosecution.

Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve compliance with the law. We aim to ensure there is a consistency of approach to enforcement by taking a consistent approach to decision making. However, because we consider the individual circumstances of each case when taking enforcement action, particularly where we are aiming to change behaviour, the enforcement action we take will depend on those case-specific circumstances. The enforcement action we take in relation to one person or entity in order to change behaviour may be different to the enforcement action we take in relation to another. For Workplace Health and Safety, the application of an enforcement decision-making framework (Enforcement Management Model) assists consistency. Peer review with other Local Authorities at liaison groups and workshops ensures that our enforcement decisions are consistent.

Accountability

All enforcement decisions made by the Environmental Health Service are made with an appropriate level of oversight within the organisation. We will record decisions to take enforcement action and retain records of all enforcement action taken by us. There are usually legislative arrangements in place for appeals against enforcement action taken by us.

Transparency

If we take enforcement action, we will specify in writing what the non-compliance is and, where appropriate, anything that needs to be done to achieve compliance, together with a timescale. We will also, where appropriate, explain the consequences of non-compliance, and any arrangements that are in place to appeal against our decision to take enforcement action. We will publicise where we use enforcement action with more significant consequences, such as successful prosecutions resulting from reports we make to COPFS. Where appropriate, we may publicise the use of enforcement action in other circumstances to achieve specific outcomes.

Targeting

We will use different types of enforcement action, as part of an evidence-based and intelligence led approach to regulation, to achieve positive outcomes related to the protection and improvement of public health, safety, the environment and the wellbeing of communities (including tackling wider criminality). Where enforcement action is required we will use the enforcement action(s) that is most appropriate at achieving these outcomes, without being restricted to less formal enforcement action in the first instance.

Timely Application

We will endeavour to take appropriate enforcement action at the earliest practicable time to respond to non-compliance or harm before it becomes chronic or persistent or established as a behaviour and, where possible, to achieve a lasting solution. We will normally allow a short period of time to comply, but will not normally delay enforcement action while non-compliance continues. We will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a health and/or safety risk to those concerned or the general public.

For Food Safety, a graduated, reasonable, proportionate, risk-based and consistent approach to enforcement is prescribed in the Food Law Code of Practice (Scotland). These factors are commensurate with the principles of this Charter.

In addition to the Principles of Good Regulation as set out above, the Environmental Health Service will ensure that during the course of enforcement investigations / actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

We believe that prevention is better than cure. Our role will involve actively working with businesses, to advise on, and assist with, compliance so businesses and others can meet their legal obligation without necessary expense. We will provide guidance and advice in a range of formats, such as face to face interactions, telephone, and online. We have access to translation services to communicate in a wide range of languages. We will seek to maximise the reach, accessibility, and effectiveness of our advice. We will provide a courteous and efficient service and officers will identify themselves by name. We will provide a contact point and telephone number and will encourage businesses to seek advice / information from us.

While it is understood that it is primarily the responsibility of individuals and businesses to ensure compliance with the law, enforcement officers will help them, wherever possible, to understand their legal responsibilities.

We will provide information and advice, in plain language, on the rules and regulations that apply. We will discuss general issues, specific non-compliances or problems with anyone experiencing difficulties. When carrying out inspections we will give positive feedback to businesses and individuals, to encourage and reinforce good practices. If asking for information, we will ensure that it is entirely necessary and that we will avoid duplicate requests for information.

East Lothian Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular:

Article 6 – the right to a fair trial

Article 8 – the right to respect for private and family life, home and correspondence

Article 14 – prohibition of discrimination on any grounds

7. When we will submit a report to the Procurator Fiscal

In Scotland, the Procurator Fiscal decides whether to bring a prosecution. This may be on the basis of a recommendation by an enforcing authority such as the Environmental Health Service of East Lothian Council. Enforcing authorities must use discretion in deciding whether to report to the Procurator Fiscal with a view to prosecution.

In Scotland, before prosecutions can be initiated, the Procurator Fiscal will need to be satisfied that there is sufficient evidence and that prosecution is in the public interest:

Evidence

The enforcement officer must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against an accused. This is an objective test that means that ultimately the Sheriff is more likely than not to convict the accused of the charge/s alleged.

Public Interest

Before submitting a report to the Procurator Fiscal, we will give consideration to balance the factors for and against any proposed report carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the accused. Some factors may increase the need to submit a report to the Procurator Fiscal, for example, where an individual or business:

- Endangers, to a significant degree, the health, safety or well being of people, animals or the environment.
- Deliberately, negligently or persistently breaches legal obligations likely to cause significant material loss, harm or nuisance to others.
- Deliberately or persistently fails to act on, or comply with, previously issued warnings or notices, having been given reasonable opportunity to do so.
- Has a history of similar breaches and/or previous convictions.
- Assaults or obstructs an enforcement officer in the course of their duties.
- Is unlikely to be able to establish any relevant statutory defences
- Is unwilling to prevent a recurrence of the problem

The sanctions and penalties will:

- Aim to change the behaviour of the offender
- Aim to eliminate any financial gain or benefit from non-compliance
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
- Be proportionate to the nature of the offence and the harm caused
- Aim to restore the harm caused by regulatory non compliance, where appropriate; and
- Aim to deter future non compliance

Our authorised enforcement officers will abide by this Charter when making enforcement decisions and all operational procedures will be written to accord with it. Any departure from policy must be exceptional, capable of justification and be fully considered by the Service Manager before the decision is made; unless it is believed that there is a significant risk to the public or environment in delaying the decision. Evidence for any deviation from this Charter will be recorded (Appendix C).

8. How do you know we are complying with the Charter?

There is no purpose for us having this Charter if we do not meet the commitments we make in it. Therefore we will:

- Through the appropriate selection and recruitment process only appoint officers who meet the relevant standards of competency for their jobs. Where additional training is identified either through the recruitment or PRD process this will be provided under the direction of the relevant officers / management.
- Ensure that no officers will carry out enforcement work unless they are suitably trained, experienced and duly authorised to do so.
- Ensure new enforcement officers are trained in the contents of this Charter, when they join the Service, while ensuring existing enforcement officers have also been trained on its requirements.
- Monitor each of our enforcement activities, to ensure we meet the Charter's objectives.
- Review this Charter on an annual basis; or sooner if the need arises.
- Ensure regulatory / enforcement issues are a standing item on the Team Meetings Agenda.
- Ensure our officers take part in national / regional liaison groups to enhance their knowledge and ensure our enforcement actions are proportionate to those carried out by other local authority regulatory services.

9. Help us to improve

We welcome your comments on the services we provide and an online platform is available to provide feedback in order that we may continually improve:

Food & Safety:

https://www.eastlothian.gov.uk/forms/form/204/food_and_safety_visits

Environmental Protection:

https://www.eastlothian.gov.uk/forms/form/205/nuisance_public_health_and_housing_complaints

Pest Control:

https://www.eastlothian.gov.uk/forms/form/206/pest_control_service

10. If you are unhappy with our Regulatory activities

Should you consider that our enforcement approach has been unfair, unreasonable, or our actions are contrary to this Charter, then you can seek redress by contacting the relevant line manager:

Enforcement Activity	Contact
Food & Safety	Andrew Douglas Principal EHO 01620 827455 adouglas@eastlothian.gov.uk
Nuisance and Housing	Shona Grant Principal EHO 01620 827336 sgrant@eastlothian.gov.uk
Public Health, Air Quality and Contaminated Land	Colin Clark Principal EHO 01620 827443 cclark1@eastlothian.gov.uk

Should you remain dissatisfied, you may contact the Environmental Health Service Manager, Derek Oliver on 01620 827365 or at doliver@eastlothian.gov.uk

Should you still remain dissatisfied and wish to proceed to make a formal complaint regarding the service delivered by an Officer of East Lothian Council Environmental Health Service, the formal complaints policy and procedure is detailed below.

What is a complaint?

We see a complaint as any expression of dissatisfaction about our action or lack of action, or about the standard of service provided by us or on our behalf.

What can I complain about?

You can complain about things like:

- delays in responding to your enquiries and requests
- failure to provide a service
- the standard of service you received
- council policy
- treatment by or attitude of a member of staff
- failure to follow proper procedure.

Your complaint may involve more than one council service or be about someone working on our behalf.

How will the Council deal with my complaint?

We will make sure that:

- your complaint is listened to seriously
- every point of your complaint is looked into and answered
- we respect your point of view and other people's points of view
- our answer to your complaint is clear and understood by you

- we take appropriate action to resolve your complaint (e.g. providing an explanation, taking action to resolve a problem or offering an apology if necessary).

What is not a complaint?

- a routine first-time request for a service, for example a first-time request for a housing repair or action on anti social behaviour
- requests for compensation from the council
- things that are covered by a right of appeal.

We also cannot deal with complaints about councillors.

Confidentiality

Your complaint will be kept confidential and details will only be given to those people who need to know for the purpose of investigating your complaint.

How long do I have to make a complaint?

Normally, you must make your complaint within six months of:

- the event you want to complain about, or
- finding out that you have a reason to complain, but no longer than 6 months after the event itself.

In exceptional circumstances, we may be able to accept a complaint after the time limit. If you feel that the time limit should not apply to your complaint, please tell us why.

Contacting the Council to make a formal complaint:

Contact the Feedback Team:

- Phone 0131 653 5290
- Email feedback@eastlothian.gov.uk
- Write Customer Feedback Team, East Lothian Council, John Muir House, Haddington EH41 3HA

When complaining, tell us:

- your full name and address
- as much as you can about the complaint
- what has gone wrong
- how you want us to resolve the matter.

Our procedure for dealing with complaints has 2 stages:

Stage 1 - Frontline Resolution

We aim to resolve complaints quickly and close to where we provided the service. This could mean an on-the-spot apology, an explanation if something has clearly gone wrong and immediate action to resolve the problem.

We will give you our decision at Stage 1 in five working days or less, unless there are exceptional circumstances.

If we can't resolve your complaint at this stage, we will explain why and tell you what you can do next. We might suggest that you take your complaint to Stage 2.

Stage 2 - Investigation

Stage 2 deals with complaints that have not been resolved at Stage 1 and those that are complex and require detailed investigation.

At Stage 2 we will:

- acknowledge receipt of your complaint within three working days
- discuss your complaint with you to understand why you remain dissatisfied and what outcome you are looking for
- give you a full response to the complaint as soon as possible and within 20 working days.

If our investigation will take longer than 20 working days, we will tell you. We will agree revised time limits with you and keep you updated on progress.

What if I am still unhappy?

After we have fully investigated, if you are still dissatisfied with our decision or the way we dealt with your complaint, you can ask the Scottish Public Services Ombudsman (SPSO) to look at it.

The SPSO cannot normally look at:

- a complaint that has not completed our complaints procedure (so please make sure it has done so before contacting the SPSO)
- events that happened, or that you became aware of, more than a year ago
- a matter that has been or is being considered in court.

You may contact the [Scottish Public Services Ombudsman](#) by:

Visiting their offices at:

4 Melville Street
Edinburgh
EH3 7NS
Telephone: 0800 377 7330
Email: ask@spsso.org.uk

Writing to them at:

Freepost SPSO

We realise that the very short single-line address looks unusual, but this is all that should be printed on the envelope to ensure it arrives safely. Please note, you do not need to use a stamp.

Getting help to make your complaint

We understand that you may be unable, or reluctant, to make a complaint yourself. We accept complaints from the representative of a person who is dissatisfied with our

service. We can take complaints from a friend, relative, or an advocate, if you have given them your consent to complain for you.

You can find out about advocates in your area by contacting the [Scottish Independent Advocacy Alliance](http://www.siaa.org.uk/). Tel: 0131 556 6443 or visit <http://www.siaa.org.uk/>

You can also approach your local Councillor, MSP or MP to help you make your complaint. Council reception staff can tell you who your Councillor, MSP or MP is and how to contact them.

You can also find this information on the web.

We are committed to making our service easy to use for all members of the community. In line with our statutory equalities duties, we will always ensure that reasonable adjustments are made to help customers access and use our services. If you have trouble putting your complaint in writing please, or want this information in another language or format, such as large font, or Braille, tell us in person, contact us on 01620 827199 or by email at translation@eastlothian.gov.uk

Appendix A: Environmental Health Service Charges

Environmental Health Service: Sampling	2015-16
Private Water Supply	Analyst Fee + Officer Time
Water: Microbiological Testing & Chemical Analysis	£180
Water: Chemical Analysis	£150
Water: Lead Content	£75
Swimming Pools / Spas: Request for Sampling	Analyst Fee

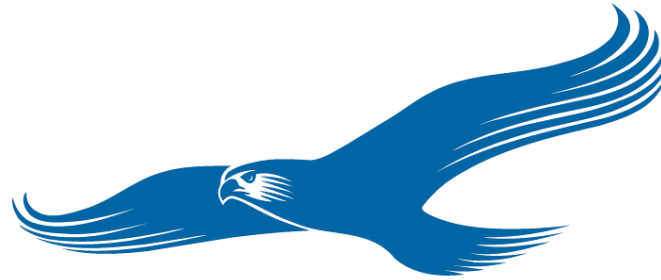
Environmental Health Service: Sampling	2015-16	2016-17	2017-18	2018-19
Private Water Supply	As above	Prescribed Fees		
Requested Sampling*	As above	£5.00 per Lab Unit + £40.00	£5.50 per Lab Unit + £41.00	£6.00 per Lab Unit + £42.00
Requested Commercial Sampling**	As above	£5.00 per Lab Unit + £20.00 per Officer hour + mileage	£5.50 per Lab Unit + £20.50 per Officer hour + mileage	£6.00 per Lab Unit + £21.00 per Officer hour + mileage
Commercial Sampling Programme	-	Quoted following detailed assessment based upon above formula		

*Domestic / Not for Profit entities: Requested Sampling Charges will be made at ELC set Laboratory Unit cost with an additional set fee (standardised 2 hours @ Officer Hour rate + £20 standardised mileage (based upon 45p per mile to cover from Haddington to sampling point, to Laboratory, back to Haddington)). Officer time will account for travelling, data input, administration and advice/guidance provided on receipt of Report. A standardised Officer time element is deemed reasonable and fair to account for properties in all parts of the Council area. An increase in one hour of Officer time will be attributed to every 5 samples from one sampling point to account for increased administration time. Edinburgh Scientific Services provides an annual price list which will be used to calculate costs dependent upon test / analysis suite required.

** Commercial entities: Requested Sampling Charges will be made at ELC set Laboratory Unit cost with an additional Officer Hour rate + mileage (45p per mile to cover from Haddington to sampling point, to Laboratory, back to Haddington). An increase in one hour of Officer time will be attributed to every 5 samples from one sampling point to account for increased administration time. Edinburgh Scientific Services provides an annual price list which will be used to calculate costs dependent upon test / analysis suite required.

Environmental Health Service: General	2015-16	2016-17	2017-18	2018-19
Export Certificate	£75	£75	£75	£75
Food Hygiene Section 50 Certificate	-	£100	£102	£104
Food Hygiene Section 39 Certificate	-	£50	£51	£52
Environmental Search	£75	£76	£77	£78
Immigration Letter	£75	£76	£77	£78
Duplicate document	-	£10	£11	£12
Houses in Multiple Occupation Licensing Inspection	-	Internal Charge		
Incident Response Costs	Cost Recovery	Cost Recovery	Cost Recovery	Cost Recovery

Appendix B: Environmental Health Service Enforcement Guidance



East Lothian
Council

Environmental Health Service

Enforcement Guidance

2016

Food Safety

In accordance with the Food Law Code of Practice (Scotland)¹ and the principles of our Service Charter, Food Safety actions will be taken in accordance with the following table:

Enforcement Action	Conditions which would merit action or occasions when action would be considered most appropriate
Advice	Given on every occasion.
Inspections / interventions	Inspections and other interventions are carried out in accordance with the Food Law Code of Practice (Scotland), and at a frequency determined by the appropriate hygiene inspection rating for the premises.
Inspection Report	Given on every formal planned inspection and further intervention, differentiating between legal requirements and recommendations.
Warning / Advisory Letter	Food complaint which, after consideration of the Food Complaints Prosecution Criteria Guide (Appendix 1) does not warrant reporting to the Procurator Fiscal. Failed informal sample.
Revisit or further intervention	Undertaken when the detailed inspection report indicates that significant contraventions relating to food safety (as opposed to minor offences) exist. Further interventions will also be carried out where premises are deemed not to be broadly compliant and, or, where a business requires further assistance in ensuring compliance. The inspection report will indicate under the heading 'Action we will Take' when the revisit will take place. Investigation of complaints or incidents notified to East Lothian Council.
Hygiene Improvement Notice	Normally when one or more of the criteria below apply: <ul style="list-style-type: none"> - Where such action is proportionate to the risk to public health. - Where the history of the premises indicates a record of non-compliance with breaches of food hygiene or food processing regulations. - Where the enforcing officer is not entirely confident that an informal approach will be successful, or where an informal approach has failed on the previous inspection. <p>And</p> <ul style="list-style-type: none"> - Where the enforcing officer is satisfied that there would be sufficient evidence to present a case to the Procurator Fiscal.
Remedial Action Notice	Significant or continuous breach of hygiene conditions in food establishment.
Seizure / Detention	Where voluntary procedures are not considered appropriate: <ul style="list-style-type: none"> - Food which has been certified as not being produced or processed in line with 'Hygiene Regulations'. - Food which is deemed to be unfit or unsafe. - Food which is illegally imported from a third country.
Hygiene Emergency Prohibition Notice. (HEPN)	Where the health risk condition is fulfilled and accepting the food business operator's offer of a voluntary closure is not considered appropriate.
Emergency Prohibition Notice (EPN)	Where there is evidence of an imminent risk of injury to health and accepting the food business operator's offer of a voluntary closure is not considered appropriate.
Report to Licensing Board / Committee	For offences resulting in formal enforcement action or a report to Procurator Fiscal, Licensing Board / Committee will be notified in relation to a premises or person holding a relevant Licence.
Refusal to Approve an Establishment under Regulation (EC) 853/2004	Establishment fails to meet the necessary hygiene and management controls required in legislation.
Revocation of Establishment Approval	Continued serious breaches of hygiene and safety requirements. Service of HEPN.
Prosecution	See 6. When we will submit a report to the Procurator Fiscal , within the Service Charter.

¹ <http://www.foodstandards.gov.scot/sites/default/files/CoPFood-FSS-final.pdf>

Food Safety (within East Lothian Council premises)

In accordance with the Food Law Code of Practice (Scotland)² and the principles of our Service Charter, Food Safety actions will be taken in accordance with the following table:

Enforcement Action	Conditions which would merit action or occasions when action would be considered most appropriate
Advice	Given on every occasion.
Inspections / interventions	Inspections and other interventions are carried out in accordance with the Food Law Code of Practice (Scotland), and at a frequency determined by the appropriate hygiene inspection rating for the premises.
Inspection Report	Given on every formal planned inspection and further intervention, differentiating between legal requirements and recommendations.
Revisit or further intervention	Undertaken when the detailed inspection report indicates that significant contraventions relating to food safety (as opposed to minor offences) exist. Further interventions will also be carried out where premises are deemed not to be broadly compliant and, or, where a business requires further assistance in ensuring compliance. The inspection report will indicate under the heading 'Action we will Take' when the revisit will take place. Investigation of complaints or incidents notified to East Lothian Council.
Report to Service Manager	Where a routine inspection or other visit identifies no issues or only minor issues of non-compliance with food safety matters, the normal reporting mechanism, will continue. A copy of the Inspection Report will be left on site with a further copy sent to the relevant manager for the service. Each service area will have identified the members of staff and management they wish correspondence to be sent to. All such individuals should be in a position to ensure appropriate action is taken, if required, following an inspection by officers from Environmental Health.
Report to Chief Executive, Depute Chief Executive and Head of Service	Where significant contraventions or continued issues of non-compliance are identified, these matters will be brought directly to the attention of the Chief Executive, Depute Chief Executive and Head of Service. A timeframe for compliance will be identified in this notification. The appropriate staff and management of the affected service will also be included in this notification. Before notification is made, the matter will be fully discussed with the Environmental Health Service Manager. A further visit will be made by officers from Environmental Health to assess compliance at the expiry of the stipulated timeframe. Matters addressed / not addressed will be confirmed in writing to the Chief Executive, Depute Chief Executive and Head of Service.

² <http://www.foodstandards.gov.scot/sites/default/files/CoPFood-FSS-final.pdf>

Workplace Health & Safety

In accordance with the Enforcement Guide (Scotland)³ and the principles of our Service Charter, Workplace Health & Safety enforcement will be taken in accordance with the following table:

Enforcement Action	Conditions which would merit action or occasions when action would be considered most appropriate
Advice	Given on every occasion.
Inspections / interventions	Inspections and other interventions are carried out in accordance with the National Code ⁴ and as part of national, regional and/or local projects and initiatives.
Inspection / Intervention Report	Given on every formal planned inspection and intervention.
Revisit or further intervention	Undertaken when the detailed inspection report indicates that significant contraventions relating to health and safety (as opposed to minor offences) exist. The report will indicate under the heading 'Action we will Take' when the revisit will take place. Investigation of complaints or accidents notified to East Lothian Council.
Improvement Notice	Officers will utilise the Enforcement Management Model (EMM) ⁵ , which is a framework to help inspectors decide upon a proportionate and effective response. See Note below.
Prohibition Notice	Officers will utilise the Enforcement Management Model (EMM) ⁶ , which is a framework to help inspectors decide upon a proportionate and effective response. See Note below.
Report to Licensing Board / Committee	For offences resulting in formal enforcement action or a report to Procurator Fiscal, Licensing Board / Committee will be notified in relation to a premises or person holding a relevant Licence.
Prosecution	Officers will utilise the Enforcement Management Model (EMM) ⁷ , which is a framework to help inspectors decide upon a proportionate and effective response. See Note below and 6. When we will submit a report to the Procurator Fiscal , within the Service Charter.

Note:

Inspectors are confronted by a myriad of unique variables when carrying out inspections, assessments and investigations, including different work activities, sectors, organisational structures, contractual relationships etc. Assessing risk and compliance with the law therefore ranges from being relatively straightforward to extremely complex.

The EMM is a straightforward linear model and so cannot truly capture all the nuances and complexities of discretionary decision making in all circumstances. While the EMM provides a framework for driving consistency, it is crucial that inspectors' discretion is not fettered by artificially constraining all decisions to the EMM.

Occasionally, consideration of all factors may produce an alternative enforcement conclusion. When this occurs, Officers will discuss with the Service Manager, who will record the final decision and the reasons.

³ <http://www.hse.gov.uk/enforce/enforcementguidesc/index.htm>

⁴ <http://www.hse.gov.uk/lau/la-enforcement-code.htm>

⁵ <http://www.hse.gov.uk/enforce/emm.pdf>

⁶ <http://www.hse.gov.uk/enforce/emm.pdf>

⁷ <http://www.hse.gov.uk/enforce/emm.pdf>

Private Water Supplies

In accordance with the principles of our Service Charter, private water supplies enforcement action will be taken in accordance with the following table:

Enforcement Action	Conditions which would merit action or occasions when action would be considered most appropriate
Advice	Given on every occasion.
Site visits and sampling	Type A and B supplies will be visited and sampled in accordance with requirements of the private water supply legislation and the Service Plan.
Warning / Advisory Letter	When water quality fails microbiological and chemical parameters required by legislation and corrective action is required to protect public health.
Formal action and Notice	<p>Considerations likely to give rise to the service of notice are serious breach of water quality and safety, having regard to:</p> <ul style="list-style-type: none"> - Consultation with the Consultant in Public Health Medicine or appointed Medical Officer of Health. - Linked or direct cause of illness. - Historic data showing poor standard of compliance. - Whether it is reasonable to serve the Notice. - Whether a temporary departure under the 2006 Regulations can be granted. - Improvements carried out to the supply and the time taken for these to be done. - Poor condition of the supply giving rise to a risk to public health. - Details of relevant person(s) and any legal agreements. - Class (Type/Level) of supply/tenure/type of premises. - Lack of co-operation shown by the relevant person(s) and users of the supply. - Availability of alternative supplies and the public mains. - Requirements of other legislation.
Further investigations and monitoring	Where further involvement is required to ensure that steps are being taken to protect public health, and or improve water quality and safety.
Prosecution	See 6. When we will submit a report to the Procurator Fiscal , within the Service Charter.

Smoking in Public Places

In accordance with the principles of our Service Charter, smoking in public places enforcement action will be taken in accordance with the following table:

Enforcement Action	Conditions which would merit action or occasions when action would be considered most appropriate
Advice	Given on every occasion.
Inspections / interventions	Inspections and other interventions are carried out in conjunction with other visits to premises by officers of Environmental Health or in response to queries and/or complaints.
Informal Action	Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters or included within inspection/intervention reports. Such circumstances would include premises that have not been subject to a visit previously and legislative breaches do not involve people smoking within the premises.
Formal Action – Fixed Penalty Notices	Served where informal approach is not considered appropriate, in that: <ul style="list-style-type: none"> - Informal action has been taken previously and non-compliance continues; and - Evidence of individuals smoking or being permitted to smoke in a public place.
Report to Licensing Board / Committee	For offences resulting in formal enforcement action or a report to Procurator Fiscal, Licensing Board / Committee will be notified in relation to a premises or person holding a relevant Licence.
Prosecution	See 6. When we will submit a report to the Procurator Fiscal , within the Service Charter.

Public Health, Housing, Pollution and Pests

In accordance with the principles of our Service Charter, **Public Health statutory nuisance** enforcement action will be taken in accordance with the following table:

Enforcement Action	Conditions which would merit action or occasions when action would be considered most appropriate
Informal action	Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include: <ul style="list-style-type: none"> - Cases where the level of nuisance is not established as statutory but advice is required to prevent circumstances deteriorating further. - Cases where the consequences of non-compliance will not pose a significant or immediate risk to public health. - Cases where previous compliance has been established by informal means and this will be more effective than formal approach.
Statutory notice – S.80 Environmental Protection Act 1990	Informal approach has failed to ensure compliance and a statutory nuisance exists. Statutory nuisance is deemed to exist and present a significant or immediate risk to public health.
Works in default and recovery of costs.	At the discretion of East Lothian Council, works can be carried out to remove statutory nuisance if the notice period has expired.
Fixed penalty notices – Environmental Protection Act 1990.	Issued for non-compliance with statutory notice as alternative sanction to report being sent to the Procurator Fiscal. Failure to accept alternative sanction will result in prosecution being considered.
Public Health (Scotland) Act 2008 – notices and powers for disinfection, disinfestations, decontamination of premises and things, and destruction of things.	Where there is deemed to be a risk to public health from infectious disease or contamination from a premises or anything in or on premises, and the informal approach has not been successful or the risks determine more immediate formal action.
Fixed penalty notices – Public Health (Scotland) Act 2008 – Section 105	Where an operator has failed to comply with the requirements of the legislation in regard to sunbeds informally – section 95, 98, 100 and 101 of the act.
Prosecution.	See 6. When we will submit a report to the Procurator Fiscal , within the Service Charter.

In accordance with the principles of our Service Charter, **noise pollution / nuisance** enforcement action will be taken in accordance with the following table:

Enforcement Action	Conditions which would merit action or occasions when action would be considered most appropriate
Informal action	Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include: <ul style="list-style-type: none"> - Cases where the level of nuisance is not established as statutory but advice is required to prevent circumstances deteriorating further. - Cases where the consequences of non-compliance will not pose a significant or immediate risk to public health. - Cases where previous compliance has been established by informal means and a reasonable time period has elapsed since previous problem. - Cases where informal procedure must be followed before taking formal action, e.g. dealing with audible intruder alarms of property and vehicles.
Statutory notice – S.80 Environmental Protection Act 1990	Informal approach has failed to ensure compliance and a statutory nuisance exists, or a nuisance is anticipated.
Fixed penalty notices – Environmental Protection Act 1990.	Issued for non-compliance with statutory notice as alternative sanction to report being sent to the Procurator Fiscal. In cases of recurrence of noise nuisance for each time conditions of notice are breached. This will be up to a maximum of three occasions at which time further breaches will result in a report to the Procurator Fiscal. Failure to accept alternative sanction will result in prosecution being considered.
Prosecution.	See 6. When we will submit a report to the Procurator Fiscal , within the Service Charter.

In accordance with the principles of our Service Charter, **housing standards and defective buildings** enforcement action will be taken in accordance with the following table:

Enforcement Action	Conditions which would merit action or occasions when action would be considered most appropriate
Informal action	Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include: <ul style="list-style-type: none"> - Cases where the level of problem is not established as risk to public health or safety but advice is required to prevent circumstances deteriorating further. - Cases where the consequences of non-compliance will not pose a significant or immediate risk to public health. - Cases where previous compliance has been established by informal means and this will be more effective than formal approach
Works Notice	Circumstances where a domestic dwelling fails to meet the tolerable standard requirements of the Housing (Scotland) Act 1987 and 2006 or is deemed substandard.
Closing Order	Circumstances where a domestic dwelling fails to meet the tolerable standard requirements of the Housing (Scotland) Act 1987 and 2006 or is deemed substandard. This would apply to a house that only forms part of a building and the building does not comprise only of houses which do not meet the tolerable standard.
Demolition Order	Circumstances where a domestic dwelling fails to meet the tolerable standard requirements of the Housing (Scotland) Act 1987 and 2006 or is deemed substandard. This would apply only to a building which is a single dwelling or contains a majority of homes not meeting the tolerable standard.
Defective Buildings Notice – Environmental Protection Act, Building (Scotland) Act 2003, Civic Government (Scotland) Act 1982, s.87(3)	Where serious disrepair is identified in any house or non-domestic building and previous informal action has failed to ensure effective repair is carried out. Immediate service for water ingress to ensure effective repair is carried out.
Works in default and recovery of costs	Works in default may be considered appropriate in circumstances where the terms of certain notices have not been complied with. Circumstances may also include emergency access to a property to effect repair.
Prosecution	See 6. When we will submit a report to the Procurator Fiscal , within the Service Charter.

In accordance with the principles of our Service Charter, **vehicle pollution and idling** enforcement action will be taken in accordance with the following table:

Enforcement Action	Conditions which would merit action or occasions when action would be considered most appropriate
Informal action	Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include: <ul style="list-style-type: none"> - Cases where vehicle emissions are outwith legal parameters and the owner has sought assistance to make improvements. - drivers of idling vehicles are co – operative when approached by officers. - campaigns to maximise awareness of damage caused by vehicle emissions (including ongoing advertising and establishment of phone and text lines). - offering free vehicle emissions checks. - establishment of system to work with bus companies to reduce the amount of idling carried out by buses. - liaison with schools over the four partnership areas to reduce vehicle idling outside schools. - all idling complaints dealt with ensuring all parties involved understand the legal and social reasons behind the campaign and a line of communication opened for use in the future. - “hotspots” established in all partnership areas (these are monitored regularly and action taken when vehicles found idling). - ongoing monitoring of taxis, haulage and council vehicles with action being taken where necessary. Good working relationship established with management and drivers where possible. - switch off signs erected at known problem locations and where authority is given for their use.
Fixed Penalty Notice	Where informal action to ensure compliance has not achieved the required result and the implementation of this sanction has been adopted by the Council.
Report to the Traffic Commissioner	The Traffic Commissioner receives a copy of the ‘East Central Scotland Vehicle Emissions Partnership’ annual report and is aware of the campaign.

East Lothian, Falkirk, Midlothian and West Lothian Councils work together as the East Central Scotland Vehicle Emissions Partnership, to provide a voluntary Vehicle Emissions Testing Programme which aims to raise awareness of vehicle emissions and air quality among the general public.

The Partnership provides a service between March and October at sites in Musselburgh, Haddington and Dunbar.

Together with the educational element to emissions, air quality and idling, this proactive programme helps East Lothian residents ensure that their cars will pass the MOT emissions test and be road legal.

In accordance with the principles of our Service Charter, **pest control** enforcement action will be taken in accordance with the following table:

Enforcement Action	Conditions which would merit action or occasions when action would be considered most appropriate
Informal action	Informal action to secure compliance includes offering verbal advice, verbal warnings, requests for action and the use of advisory letters. Such circumstances include: <ul style="list-style-type: none"> - Cases where consequences of non-compliance will not pose a significant or immediate risk to public health. - Cases where previous compliance has been established by informal means and this will be more effective than a formal approach.
Formal Notices – Prevention of Damage by Pests Act	Where an informal approach has failed to secure appropriate action by a landowner or occupier to remove rats and mice. An infestation which poses a significant or immediate risk to public health.
Works in default	Where landowner or occupier has failed to comply with the requirements of the formal notice and work is required by East Lothian Council to remove the problem. The completion of the work remains at the discretion of East Lothian Council.

Appendix 1 - Food Complaints Prosecution Criteria Guide

Food Complaints Prosecution Criteria Guide

1. Is there, or is there likely to be, sufficient evidence to prepare a report to the Procurator Fiscal?
 - a. If Yes, continue with decision criteria
 - b. If No, deal with the investigation as efficiently and effectively as possible
2. Has the investigation identified failure to comply with legal Notices?
 - a. If Yes, prepare a report to the Procurator Fiscal
 - b. If No, continue to decision criteria

Premises:
Location:

Decision Criteria

Officer to circle and total Score:		SCORE		
		NO		YES
Nature of Offence				
Serious (e.g. unfit food) score (3), Significant (e.g. not of the nature) score (2), Minor (e.g. labelling) score (1).		1	2	3
Record of Compliance				
Have similar complaints gone unattended to in the past?		1	2	3
Public Interest/Prevalence				
Is it in the public interest to report the incident?		1	2	3
Willingness to Comply				
Is there a poor record of willingness to comply?		1	2	3
Chronic Poor Hygiene Standard				
Does the record of the business indicate poor hygiene and food safety standards?		1	2	3
Foreseeability				
Should the business have been able to identify the risk leading to the complaint?		1	2	3
Hazard Analysis				
Had the proprietor failed to assess and control the potential hazards involved?		1	2	3
Due diligence				
Is it likely that the company would fail in relation to producing due diligence defence?		1	2	3
Benefit to Accused				
Has the accused benefited from failure to comply?		1	2	3
TOTAL:				

Guidance

Score 0 – 18 Inclined not to proceed with Report
 Score 19 – 22 Use officer discretion / discuss with Principal EHO
 Score 23+ Proceed with Report – inform Principal EHO

Inspecting Officer (Signed):
Principal Officer (Signed):
Date:

Appendix C: Record for deviating from the Service Charter

Record for deviating from the Service Charter

Premises:
Location:
Summary of matters requiring enforcement action:
Summary of matters, including corrective actions, which would suggest the enforcement activity outlined in the Charter was inappropriate in this instance:
Agreed course of action between Officer and Principal Officer:
Discussion outcomes with Service Manager:
Inspecting Officer (Signed): Principal Officer (Signed): Service Manager (Signed): Date: