

SALCOMBE HARBOUR AUTHORITY - ENFORCEMENT POLICY

1. General Powers

1.1 Salcombe Harbour Authority is a statutory Harbour Authority and has powers to make bye-laws, Pier and Harbour Order (Salcombe) Confirmation Act, 1954.

1.2 Contravention of bye-laws may result in prosecution through the Magistrates' Court.

1.3 The Criminal Justice Act 1982 (as amended) provided for a standard scale of fines for summary offences. The range of fines applicable to contraventions of Bye-laws is: Level 2 or Level 3 (currently £500 and £1,000).

2. Principles of Enforcement

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

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

2.3 The Harbour Authority will provide information and advice in plain language on the rules that apply and will disseminate it as widely as possible. The Harbour Authority will provide encouragement and support to ensure that their legal powers are used appropriately to improve and safeguard public health, public safety and the environment.

2.4 The purpose of any enforcement action is to promote the safety of harbour users.

2.5 Where it appears that the Harbour byelaws may have been contravened, the Harbour Authority has the options of negotiation, education and persuasion and, where a criminal offence has occurred, of cautioning or prosecuting an offender.

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

2.7 The Harbour Authority will carry out its duties in a fair, equitable and consistent manner. It will seek to be clear, open and helpful in its approach to enforcement.

2.8 The Harbour Authority will seek to target enforcement resources where they are most needed and will be informed by its other policies, aims and objectives. It will liaise with other authorities and enforcement bodies as appropriate.

ENFORCEMENT ACTION

3. Enforcement action can take the form of;
 - A warning – by way of education, given by an authorised member of the harbour staff should they observe a contravention of the bye-laws.
 - A written warning explaining the way in which a bye-law has been contravened and the implications should the offender re-offend. This is not a caution for the purposes of criminal records.
 - Suspension or revocation of a licence issued in accordance with the bye-laws. Mooring licences and contracts are issued annually and require adherence to the bye-laws.
 - Prosecution – as an ultimate sanction.
 - A combination of any of the above.

4. Consideration of action

4.1 Prosecution is a serious step and must be regarded as the ultimate sanction. A prosecution will be initiated only when the alleged conduct has been such that the Harbour Authority cannot impose an appropriate sanction itself and the matter therefore requires the attention of the Court.

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

4.3 When dealing with alleged offences,

- Officers will always identify themselves and explain the purpose of their visit or interview.
- Each case will be considered on its individual merits and a prosecution will only be initiated in accordance with this Policy.
- Having duly considered the Harbour Authority's internal policies due regard will be given to the Code for Crown Prosecutors.
- Any decision to initiate a prosecution will be recorded in writing and the reasons for initiating the prosecution will be given.
- Any investigation carried out by the Harbour Authority will be conducted pursuant to the Police and Criminal Evidence Act 1984 (and/ or any other relevant legislation) with due regard to the applicable Codes of Practice.
- In addition, where applicable, best practice will be observed as set out in national guidance issued by bodies such as the Department for Transport (Ports Policy) and/ or Maritime and Coastguard Agency.

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

ENFORCEMENT FACTORS

5. In considering the appropriate enforcement action, the Harbour Authority will take into account the following;
 - The seriousness of the complaint.
 - The risk of harm to the public and others.
 - The public interest.
 - The explanation of the offender.
 - The attitude of the offender.
 - Whether the matter is a recurrence.
 - Whether there have been any other contraventions of bye-laws or Legislation by the offender.
 - The willingness of the alleged offender to prevent a recurrence of the incident.
 - Any action taken by the offender to mitigate damage/ loss to others
 - The availability of witnesses.
 - The reliability of witnesses.
 - The sufficiency of evidence.

SUSPENSION OR WITHDRAWAL OF MOORING LICENCE

6. If following consideration of these factors the Harbour Master decides that the offender's mooring licence should be suspended or revoked altogether, he will offer the offender the opportunity to make written representations about that before making any decision. If after further consideration the Harbour Master orders suspension or revocation of the licence, then the offender may make a written request for the Chairman of the Harbour Board to review that decision. The Chairman's decision will be final.

PROSECUTION

7. Prosecution, as an ultimate sanction will be considered in the following circumstances where;
 - The alleged offence is a flagrant breach of bye-laws or legislation such that public safety or well being is or has been put at risk.
 - The alleged offence involves failure to comply with a warning.
 - There is a history of similar offences.
 - The alleged offence involves risk of damage to the environment.
 - There are no other public interest factors indicating that prosecution is not appropriate.
8. In appropriate cases, the Harbour Authority will seek to recover the costs of taking enforcement action from a convicted offender. Any award of costs will be for the court to determine.