FALMOUTH HARBOUR

UK's Atlantic gateway.

Enforcement Policy

Version No.	Date	Document Author	Description of changes made
V 1.0	23-01-26	Harbour Master	New version control

This document is reviewed as part of the internal audit process.

Review triggers are set within SharePoint and are author, date, and time stamped by the system.

Falmouth Harbour Commissioners undertake to investigate all incidents reported to them where it is practicable to do so and it appears that a breach of legislation may have occurred.

Investigations will be undertaken in accordance with a written procedure and will determine whether there is a case to answer in respect of a breach of legislation.

Where it is considered by the Harbour Master that there is a case to answer, they will review the evidence available and decide whether to bring the matter to the attention of the Commissioners for their consideration.

Falmouth Harbour Commissioners are a statutory Harbour Authority and have powers to make byelaws and directions which have legal force. Contravention of these may result in prosecution through the Magistrates Court.

The Commissioners may consider prosecution from time to time using other legislation such as the Merchant Shipping Act, the international regulations for Prevention of Collision at Sea and the Pilotage Act should it be considered in the public interest to do so.

In making decisions about enforcement action, the Commissioners will act in wider public interest with the primary aim of securing a safe and pollution free environment.

ENFORCEMENT ACTION

Enforcement action can take the form of;

(a) A warning.
(b) Suspension or revocation of a licence issued in accordance with a bye-law.
(c) A formal Caution.
(d) Prosecution.
(e) A combination of any of the above.

FACTORS FOR CONSIDERATION

In considering the appropriate enforcement action, the Commissioners will take into account the following:

(a) The risk of harm to the public and others.
(b) What is in the public interest.
(c) The seriousness of the complaint.
(d) The explanation of the alleged offender.
(e) Whether the matter is a recurrence.
(f) Whether there have been other contraventions of Byelaws or Legislation.
(g) The willingness of the alleged offender to prevent a recurrence of the incident.
(h) The availability of witnesses.
(i) The reliability of witnesses.
(j) The sufficiency of evidence.

REVIEWING THE EVIDENCE

Before any enforcement action is contemplated, the evidence shall be subject to a formal review to decide if there is a case to answer and sufficient evidence in support of the case. The review shall be conducted by the Harbour Master and a legal expert if required.

DECIDING ENFORCEMENT ACTION

The decision as to what level of enforcement action to take is to be taken by the Board of the Harbour Commissioners. It is a prerequisite of tabling the matter for consideration that the evidence review has concluded that there is sufficient (although not necessarily conclusive) evidence on which any prosecution could be based.

In deciding what action is to be taken, the Board shall consider the factors listed in the policy and consider any aggravating or mitigating public interest factors such as:

(a) A conviction is likely to result in a significant sentence.
(b) The defendant was in a position of trust.
(c) Evidence that the offence was pre-meditated.
(d) The defendant has previous convictions relevant to the offence.
(e) The offence was committed because of a genuine mistake or misunderstanding.
(f) The defendant has put right the loss or harm that was caused.

The Board must record their reasons for taking the level of enforcement action decided upon.

PROSECUTION

Prosecution will be considered in the following circumstances:

(a) Where the alleged offence is a flagrant breach of byelaws or legislation such that the public safety or wellbeing is put at risk.
(b) Where the alleged offence involves failure to comply with a warning.
(c) Where there is a history of similar offences.
(d) Where the alleged offence involves risk of damage to the environment.
(e) There are other public interest factors mitigating in favour of prosecution.

The Commissioners are committed to assisting other enforcement agencies, including the Police, in the pursuance of their statutory duties. Falmouth Harbour Commissioners will liaise with any enforcement agency that may have an interest in any matter being considered for prosecution. Having duly considered the Harbour Authorities 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. An investigation carried out by the Harbour Authorities will be conducted pursuant to the Police and Criminal Evidence Act 1984 with due regard to the applicable Code of Practice. Falmouth Harbour Commissioners recognise that once a prosecution has been commenced control of the matter is ceded to the Courts and the Criminal Justice System.