

LITTLEHAMPTON HARBOUR BOARD (LHB) - ENFORCEMENT POLICY STATEMENT

1. GENERAL POWERS

- 1.1 The terms of reference of the LHB are to administer Littlehampton Harbour in accordance with the Littlehampton Harbour and Arun Drainage Outfall Act 1927 (the 1927 Act) (as amended) Part II of the West Sussex County Councils Act, 1972 (the 1972 Act) (as amended), the Littlehampton Harbour revision order 2015 (the 2015 HRO) and the principles of governance promoted in Modernising Trust Ports (second edition) published 2009 by the Department of Transport.
- 1.2 The LHB's responsibility and authority extends to "the River Arun and the estuary thereof below the line of high water mark of ordinary spring tides on the south side of Arundel Bridge and the seaward limits being defined by point A (North 50 degrees 48.014 minutes West 0 degrees 32.844 minutes), point B (North 50 degrees 47.865 minutes West 0 degrees 32.849 minutes), point C (North 50 degrees 47.858 minutes West 0 degrees 32.069 minutes) and point D (North 50 degrees 48.135 minutes West 0 degrees 32.055 minutes) and the quays, piers, landing places and all other works, land and buildings for the time being vested in or occupied or administered by the LHB as part of the harbour undertaking, whether or not within the area described". (Article 3 of the Littlehampton Harbour Revision Order 2015 refers).
- 1.3 For the purposes of pilotage under Part I of the Pilotage Act 1987 (the 1987 Act) the area is extended three nautical miles on the west by an imaginary line joining Halnaker Mill and Middleton Church and on the east by an imaginary line joining Chanctonbury Ring and Goring Church.
- 1.4 The LHB is a Competent Harbour Authority (CHA) under the 1987 Act. The 1927 Act which incorporates certain sections of the Harbours, Docks and Piers Clauses Act 1847 give the LHB statutory powers concerning the management of the Harbour as a Statutory Harbour Authority (SHA).
- 1.5 The Harbours Act 1964 (the 1964 Act) empowers the Board to fix rates at the level required to meet its statutory obligations. The Marine Navigation Act 2013 (the 2013 Act) introduced amendments to the 1964 Act and the 1987 Act in relation to Powers of General Direction and Pilotage Exemption Certificates respectively.
- 1.6 The Littlehampton Harbour Revision Order of 2015 conferred on the Board and Harbour Master powers of Direction for the regulation and management of the harbour. Section 8 of the 2015 HRO specifies that contravention of a Direction may result in prosecution through the Magistrates' Court.
- 1.7 The Criminal Justice Act 1982 (as amended) provides for a standard scale of fines for summary offences. A person who fails to comply with a General Direction or Special Direction is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500).

2. PRINCIPLES OF ENFORCEMENT

- 2.1 Enforcement action may be appropriate in circumstances where the LHB as CHA is exercising its statutory powers to regulate the conduct of vessels in the Harbour's jurisdiction and to assist in managing the risks of marine operations.
- 2.2 In this regard, the LHB will provide information and advice in plain language on the rules that apply; will disseminate it as widely as possible and provide encouragement and support to ensure that their legal powers are used appropriately to improve and safeguard public health, public safety and the environment.
- 2.3 Where it appears that the LHB's byelaws or directions may have been contravened, the LHB has the options of negotiation, education and persuasion and, where an offence has occurred, of warning or prosecuting an offender. In considering the action to be taken, the circumstances of the case; the operator's attitude; the costs of compliance and that any action it takes is proportionate to the risks will be taken into account.
- 2.4 The carrying out of such duties will be undertaken in a fair, equitable and consistent manner and, at all times, the LHB's approach to enforcement will be clear, open and helpful. The LHB 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.
- 2.5 In implementing its enforcement policies the LHB recognises that most harbour users want to comply with the law and will help such users to meet their legal obligations without unnecessary expense. However, in order to promote the safety of all harbour users firm action including prosecution where appropriate will be taken against those users that flout the law or act irresponsibly.

CONSIDERATION OF ACTION

3.1 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.
- 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 (including the Code for Crown Prosecutors).
- 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.

3.2 In considering whether any enforcement action should be taken, the LHB 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 Directions 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 and/or loss to others;
- The availability of witnesses;
- The reliability of witnesses;
- The sufficiency of evidence;
- A combination of any of the above.

4 ENFORCEMENT ACTION

4.1 The types of Enforcement action available to the LHB can take the form of:

- In the event of a contravention of a General or Special Direction, a verbal warning which will be recorded and given by an authorised LHB member of staff;
- A written warning explaining the way in which a Direction 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 Mooring Licence;
- Prosecution – as an ultimate sanction.

4.2 If, having regard to the evidence, the Harbour Master decides that the mooring or berthing facility should be suspended or revoked altogether, he will offer the boat owner the opportunity to make written representations about this action before making any decision. If, after further consideration, the Harbour Master orders suspension or revocation of the mooring or berth, then the boat owner may, within 7 days from the date of such an order, make a written request for the Chairman of the LHB to review that decision. The Chairman's decision will be final.

4.3 The LHB recognises that 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 LHB cannot impose an appropriate sanction itself and, thus, the matter must be ceded to the Courts. Such a sanction will be considered in the following circumstances :-

- The alleged offence is a flagrant breach of Directions 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.

4.4 The Harbour Authority is committed to assisting other enforcement agencies, including the Police, the Environment Agency (EA) and the Maritime and Coastguard Agency (MCA) to pursue their statutory duties. The LHB will liaise with any enforcement agency that may also have an interest in any matter being considered for prosecution.

5 COSTS

5.1 The LHB always will seek to recover its prosecution costs of taking enforcement action, otherwise, failure to do so would cause the costs to be borne by all harbour users. Any award of costs will be for the court to determine.



Philip Bush
Chairman, Littlehampton Harbour Board

Dated 7th April 2017