

Compliance and Enforcement Policy



Introduction

Set up by Act of Parliament in 1971, Chichester Harbour Conservancy (the Conservancy) has the duty to conserve, maintain and improve the harbour and amenity area for recreation, nature conservation and natural beauty. As well as being the statutory harbour authority, the Conservancy is the Joint Advisory Committee for the Area of Outstanding Natural Beauty (AONB). Harbour authorities are responsible for managing and running safe and efficient harbours. They have particular responsibilities in relation to the safety of vessels and people within the harbour, efficient navigation and the protection of the harbour environment.

To meet these responsibilities effectively, the Conservancy has a duty to regulate the use of the harbour within its jurisdiction as defined in the CHC Act 1971, including vessel traffic, by means of Byelaws, Special Directions, Harbour Directions and national and international legislation (such as the International Regulations for the Prevention of Collisions at Sea). The principle powers available to the Conservancy are detailed in Schedule 1.

This document sets out the Conservancy's overall approach to achieving compliance and provides information about the general principles the Conservancy will follow including a number of available enforcement options.

Better Regulation

Where the Conservancy undertakes compliance activity, it will work in accordance with the Regulators' Code¹ and the Legislative and Regulatory Reform Act 2006 (as amended²). Regulators within the scope of the Regulators' Code are diverse but share a common primary purpose – to regulate for the protection of the vulnerable, the environment, social or other objective. The Code seeks to promote proportionate, consistent and targeted regulatory activity³ through the development of transparent and effective dialogue and understanding between regulators and those they regulate. In carrying out its functions, including the development of policies and operational procedures that guide our regulatory activity, the Conservancy will be guided by the principles of the Regulators' Code and ensure that;

1. it will carry out its activities in a way that supports those that are regulated to comply -
2. it will provide simple and straightforward ways to engage with those that are regulated and hear their views
3. it will base its regulatory activities on risk
4. it will share information about compliance and risk
5. It will ensure clear information, guidance and advice are available to help those that are regulated to meet their responsibilities to comply
6. It will ensure that their approach to their regulatory activities is transparent

¹ <https://www.gov.uk/government/publications/regulators-code>

² <http://www.legislation.gov.uk/ukpga/2006/51/contents>

³ The term 'regulatory activities' refers to the whole range of regulatory options and interventions available to regulators.

Principles of Enforcement

In undertaking its regulatory responsibilities, the Conservancy starts from the position that the majority of harbour users are compliant with the regulations and controls that affect them. The Conservancy will work with all harbour users to ensure that they understand what rules apply to their particular activity and the rationale that makes regulation necessary.

Where people are not aware of the rules that apply to them or they require further guidance to ensure that they are compliant, the Conservancy will assist by providing guidance and/or assistance and will raise awareness, where possible, as a first step to achieving compliance.

The Conservancy's staff will consider dialogue, education and persuasion in dealing with those who contravene regulations. Where a more serious breach of regulations has been committed the further options of cautioning or prosecuting an offender are available.

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

Legal powers will be used proportionately and appropriately to safeguard and improve public safety and the environment. The safety of residents, harbour users and visitors is of primary importance, and will be the focus of any enforcement action.

The Conservancy will minimise the costs of compliance for users by ensuring that any action taken will be proportionate to the risks presented by the regulatory breach.

The Conservancy will seek to target enforcement resources in areas of greatest need, and will be guided by its policies, aims and objectives. Regular liaison with other enforcement agencies will take place, and joint working will be considered to resolve particular issues as they arise.

Enforcement Action

The Conservancy will endeavour to achieve compliance through education, advice and guidance wherever this is possible. It will use appropriate and proportionate action (including enforcement if necessary) where this has not been successful. The range of enforcement tools which the Conservancy may use in order to achieve compliance are set out below:

Verbal guidance

Verbal guidance may be provided when a minor infringement in regulations is detected. This approach is used to remind person(s) of relevant regulations and rules.

Advisory Letter

Where it is believed that breaches of the regulations may have been committed and it is appropriate to do so, an advisory letter may be sent reminding the person(s) of the need to comply with the law.

Official Written Warning/Infringement Notice

Where there is evidence that an offence has been committed but it is not appropriate to implement formal prosecution proceedings, an official written warning letter may be sent or an infringement notice issued to the regulated person(s), outlining the alleged offending, when it occurred and what regulation(s) were breached. It will also set out that it is a matter which could be subject to prosecution should the same behaviour occur in the future.

Prosecution

As a last resort, or response to more serious activity, criminal prosecutions are an important tool in discouraging non-compliance; the purpose is to secure conviction and ensure that any wrongdoing is dealt with by a Court at an appropriate level, thus acting as a deterrent to any future wrongdoing by both the offender and others who may engage in similar behaviour.

A prosecution may be commenced where it is felt that the matter is too serious or not suitable for another form of disposal such as an official written warning/infringement notice, advisory letter or verbal guidance. In order to prosecute, the prosecutor has to be satisfied that there is sufficient evidence to support enforcement and that there is a clear public interest in instigating legal proceedings.

As a public prosecutor, the Conservancy acts under the supervision of the Attorney General and abides by the principles set out in the Code for Crown Prosecutors⁴, the two main principles of which are set out below.

Sufficiency of Evidence Test

As a public prosecutor, the Conservancy will only commence a prosecution if it is satisfied that there is a "realistic prospect of conviction" against each suspect on each charge on the available evidence. If a case does not pass this test, it will not go ahead regardless of how important or serious it may be.

If a case passes the sufficiency of evidence test, the Conservancy will consider whether it is appropriate to prosecute, or whether it is appropriate to exercise one of the enforcement options available to it as set out above. In determining the correct response in any individual case, the Conservancy will always take into account the public interest in prosecuting.

Public Interest Test

Where there is sufficient evidence to justify a prosecution the Conservancy must go on to consider whether a prosecution is required in the public interest. The provisions of the CHC Act 1971 in relation to the creation of specific offences and the creation of bye laws set out factors which the Conservancy will also take into account when deciding whether formal proceedings are suitable for the activity under consideration.

In assessing the public interest each case must be considered on its own facts and on its own merits. In addition to the public interest factors set out in the Code for Crown Prosecutors, some common public interest factors which will be considered when deciding on the most appropriate course of action to take are listed below.

- a) The seriousness of the offence;
- b) The impact of the offending on the environment, including wildlife, the public and also, where applicable, having regard to the objectives of protected areas within the harbour and the harbour authority's area of jurisdiction;
- c) The financial benefit to the offender of the offending or other financial aspects of the offence, including the impact on other legitimate operators;
- d) Whether the offence was committed deliberately, or officers were obstructed during the course of their duties or any investigation;
- e) The previous actions and enforcement record of the offender;
- f) The attitude of the offender including any action that has been taken to rectify or prevent recurrence of the matter(s);

⁴ https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf

- g) Where offences are prevalent or difficult to detect and the deterrent effect on others by making an example of the offender.

A prosecution is less likely to be appropriate if:

- a) The seriousness and the consequences of the offending can be appropriately dealt with by an out-of-court disposal which the person(s) accepts ;
- b) The offence was committed as a result of a genuine mistake or misunderstanding;
- c) The financial gain or disturbance to sensitive marine habitat can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- d) There has been a long delay between the offence taking place and the date of the proposed proceedings, unless there unavoidable or particular circumstances that caused the delay;
- e) The person(s) played a minor role in the commission of the offence; or
- f) The suspect is, or was at the time of the offence, suffering from a relevant and significant disability or health problem or other disadvantage.

Schedule 1

Principal Powers Available to the Conservancy

Byelaws⁵ - Many Harbour authorities have powers to make and enforce local byelaws – enforceable through criminal proceedings, breach of which may be liable to penal sanctions. Byelaws may cover a wide range of subjects within the harbour and apply to harbour land as well as the water, for example; navigation, goods and general byelaws for (but not limited to), inspection, deposit rubbish, damage to property, speed of vessels and the regulation of vessels within the port. The powers of the Conservancy are set out in ss.83-85 CHC Act 1971 (as amended).

Specific Offences – The CHC Act 1971 creates specific criminal offences or for certain actions which may lead to the levying of a fine or payment or which are enforceable by the Conservancy separately from any offences set out in the Conservancy's byelaws. Key offences are set out below:

50. Penalty For obstructing works etc.

(1) Any person who;

(a) wilfully obstructs any person acting under the authority of the Conservancy in setting out moorings; or

(b) pulls up or removes any moorings or any poles or stakes driven into the ground for the purpose of such moorings; or

(c) causes a vessel to be moored except at a mooring provided or licensed by the Conservancy under section 49 (Powers as to moorings, etc.) of this Act or at a quay, jetty, slipway or other work; or

⁵ Please click link for copy of byelaws http://www.conservancy.co.uk/assets/assets/water_byelaws.pdf

(d) places, lays down, maintains or uses any mooring not provided or licensed by the Conservancy under the said section of this Act; shall for every such offence be liable to a fine not exceeding *fifty pounds.

(2) If any person contravenes paragraph (d) of subsection (1) of this section, the Conservancy may remove the mooring in question and recover from that person the expenses incurred in doing so.

75. Penalty for evading payment of charges

If the owner of any vessel or goods shall at any time elude or evade, or attempt to elude or evade payment of or wrongfully refuse to pay any charges payable by such owner to the Conservancy at the time when the same shall become due and payable, he shall be liable to pay to the Conservancy a sum of fifteen pounds or a sum equal to three times the amount of such charges (whichever shall be the greater), which sum shall be a debt due to the Conservancy and shall be recoverable by the Conservancy in any court of competent jurisdiction.

78. Recovery of charges

In addition to any other remedy given by this Act and by the Act of 1847, as incorporated with this Act, and whether the demand required by section 44 of that Act has been made or not, the Conservancy may recover any charges payable to them as a debt in any court of competent jurisdiction.

87.-(1) Powers of interrogation, removal and search

Any duly authorised officer of the Conservancy may require any person on or seeking access to the harbour or any vessel using the harbour to state truly his name and address and the nature and place of his business thereon or his purpose thereon, or in seeking access thereto, and may require any such person to produce for inspection by such officer any pass or other authority which may have been issued to him by or on behalf of the Conservancy, and any person who fails to comply with any such requirement shall be guilty of an offence and liable to a fine not exceeding ten pounds.

(2) Section 298 of the Customs and Excise Act, 1952, shall have effect for the purposes of this Act as if the harbour were the dock area of a port, within the meaning of subsection (2) (c) of that section.

88. Vessels Adrift

(1) The owner or master of a vessel adrift in the harbour shall be guilty of an offence and shall be liable on summary conviction in respect thereof to a fine not exceeding *fifty pounds.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under subsection (1) of this section to prove that the vessel did not become adrift as the result of any neglect or default on his part.

The Criminal Justice Act 1982

The *CJA 1982 (as amended by the CJA 1991) provides the standard scale for fines as follows:

Scale Level	Historic Amount	Maximum Fine
1	£50	£200
2	£100	£500
3	£400	£1,000
4	£1,000	£2,500
5	£2,000	Unlimited (since the Legal Aid, Sentencing and Punishment of Offenders Act 2012)

Any historic fine amounts detailed above would now be interpreted according to the current scale.

Special Directions – Sections 52 and 53 of the Harbours Docks & Piers Clauses Act 1847, as incorporated into the CHC Act 1971. The Harbour Master (or his Deputies) is able to give Special Directions to vessels or persons within harbour limits that includes directions of when and how vessels may enter or navigate within the harbour and where and how they may moor. Special Directions are given to deal with matters that are of immediate concern and will often be an oral instruction. These powers are given for the purpose of giving specific directions to specific vessels for specific movements, although the powers may be expressed to allow directions to be given to a class of vessels, or all vessels, in an emergency.

Section 89 CHC Act 1971 extends the provisions of section 52 above:

(a) shall extend to empower the harbour master to give directions prohibiting the mooring or anchoring of vessels in any particular parts of the harbour;

(b) shall not be construed to require the harbour master in emergency to give particular directions in the case of every vessel in respect of which it is desired to exercise any of the powers of that section, but in pursuance of that section for all or any of the purposes thereof the harbour master shall be entitled in emergency to give general directions applicable to all vessels or to particular classes of vessels.

Harbour Directions – The Conservancy was designated with powers of Harbour Directions 6 April 2015. Harbour directions will only apply to ships as defined in the Harbours Act 1964. This Act defines a ship as including every description of vessel used in navigation, seaplanes and hovercraft and may be used by a designated harbour authority to regulate ships within their harbour, or entering or leaving their harbour. They may relate to the movement, mooring and unmooring, equipment and manning of ships. The Conservancy have no extant Harbour Directions, but these can be created in a timely manner after consultation with the Port User Group, and without the need for recourse to government.

Persons who fail to comply with a byelaw or directions shall be guilty of an offence and may be liable, on summary conviction in the Magistrates Court, to a fine as prescribed in the legislation referred to above as set on the standard scale depending on the offence. For the owner or master of a vessel that discharges oil or allows oil to escape into the harbour they will be liable to a fine not exceeding £50,000 (Merchant Shipping Act 1995).

Dangerous Vessel Directions

The harbour master may give directions prohibiting the entry into, or requiring the removal from, the harbour of any vessel if, in their opinion, the condition of that vessel, or the nature or condition of anything it contains, is such that its presence in the harbour might involve a grave and imminent danger to the safety of persons or property or risk that the vessel may, by sinking or foundering in

the harbour, prevent or seriously prejudice the use of the harbour by other vessels⁶. They must have regard to all the circumstances and to the safety of any person or vessel. Such directions may be over-ridden by the Secretary of State's representative for maritime salvage and intervention who may issue contrary directions to the harbour master in the interests of safety.

6 Section 1 of the The Dangerous Vessels Act 1985.