

# Enforcement Policy

## Introduction

Guernsey Harbours operates the two main Harbours on Guernsey:

- St Peter Port.
- St Sampson.

Guernsey Harbours is responsible under the Port Marine Safety Code for the effective enforcement of its regulations, which are adopted in order to assist in managing the safety of navigation within its harbour jurisdictions.

Where appropriate, and where empowered to do so, Guernsey Harbours will pursue the prosecution of offenders utilising:

- The Harbours Ordinance, 1988.
- The International Regulations for Prevention of Collision at Sea.
- The Merchant Shipping Law, 2002.

## Policy

The policy is based on education in the first instance and generally only reverting to prosecution for repeat offenders, for offences bringing significant risk of serious injury or loss of life or for when users threaten or abuse our staff members.

Guernsey Harbours recognises that most harbour users want to comply with the law. Therefore, where it can, Guernsey Harbours 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.

Guernsey Harbours will provide information and advice in plain language on the rules that apply and will disseminate this as widely as possible. Guernsey Harbours 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.

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

Where it appears that regulations or legislation may have been contravened, Guernsey Harbours has the options of negotiation, education and persuasion and, where an offence has occurred, of warning or prosecuting an offender.

As far as the law allows, Guernsey Harbours will take account of the circumstances of the case and the operator's attitude when considering action.

Guernsey Harbours 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.

Guernsey Harbours 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.

Any decision regarding enforcement action will be impartial and objective, and will not be influenced by race, gender, politics, sexual orientation, disability or religious beliefs of any alleged offender, victim or witness; such decisions will not be affected by improper or undue pressure from any source.

## Procedures

Guernsey Harbours shall:

- Maintain through regular reviews, an effective regulatory framework, which is integrated with relevant legislation and includes local regulation resulting from risk assessment, or as otherwise made necessary.
- Develop and maintain effective enforcement procedures, which comply with relevant legal requirements and guidelines.
- Develop and maintain effective investigation procedures for use in the event of a navigational or other incident, which support Guernsey Harbours' enforcement procedures, but also meet the requirements of the navigational risk assessment in respect of identifying and promulgating any 'lessons learned'.
- Ensure that all staff involved in an incident investigation receive effective and relevant training.
- Maintain an effective surveillance and spot check regime, to monitor compliance with, and detect breaches of, relevant regulations.
- Respond to breaches of regulation, where justified by the evidence and other circumstances, by the use of formal warnings and legal prosecution.

- Manage the progress of enforcement activities, including incident investigations and prosecutions.

## Consideration of Action

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 Guernsey Harbours cannot impose an appropriate sanction itself and the matter therefore requires the attention of the courts.

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

When dealing with alleged offences:

- Guernsey Harbours' 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.

Guernsey Harbours recognises that, once a prosecution has commenced, control of the matter is ceded to the courts.

## Enforcement Factors

In considering the appropriate enforcement action, Guernsey Harbours 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 byelaws 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.

### **Enforcement Action**

This may take the form of:

- Harbour staff's verbal warning.
- Harbourmaster's verbal warning.
- Harbourmaster's written warning.
- Suspension or cancellation of berth or mooring.
- Prosecution under the relevant legislation.
- A combination of any of the above.

### **Prosecution**

Prosecution, as an ultimate sanction will be considered in the following circumstances where:

- The alleged offence is a flagrant breach of byelaws or legislation such that public safety or wellbeing 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.
- The precedents that have been set in respect of action taken in respect of similar offences.

In appropriate cases, Guernsey Harbours will seek to recover the costs of taking enforcement action following a conviction. Any award of costs will be for the court to determine.

This policy will be communicated and made available to all users of Guernsey Harbours and reviewed annually.



**Ross Coppolo**  
Chief Operations Officer - Ports



**Captain David Barker**  
Harbourmaster

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