



**Environmental Health (Commercial)**

**Health and Safety**  
**Enforcement Policy Statement**

March 2010

## **Introduction**

1. The Council believes in firm but fair enforcement of Health and Safety law in line with Health and Safety Executive's Enforcement Policy Statement (EPS). This will be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how we operate and what those regulated may expect; and accountability for our actions. These principles will apply both to enforcement in particular cases and to our management of enforcement activities as a whole.
2. The Council places great importance on the consistent use of enforcement action and does not measure itself by the quantities of enforcement action it takes and so does not set targets. The Council does not take enforcement for enforcement's sake. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be appropriate, or to assist such claims.
3. We have a range of tools at our disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Many of our dealings are informal e.g. offering duty holder's information and advice. Where appropriate our Inspectors may also serve Improvement and Prohibition Notices and prosecute.
4. The decision to prosecute will have regard to the evidential and public interest tests set down in England and Wales by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution will go ahead unless the Council's Head of Legal Services finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.
5. Where circumstances warrant it and the evidence to support a case is available we will prosecute without prior warning or recourse to alternative sanctions.
6. As with prosecution, we will use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. We will use discretion in deciding when to investigate or what enforcement action may be appropriate. Such judgments will be made in accordance with the following principles that are in accordance with the *Enforcement Concordat* and Section 18 Guidance (including the EPS).
7. The Health and Safety Executive's priorities are used to target our activities and resources via our Health and Safety Intervention Plan. To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances. We will carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so.

## **The Purpose of Enforcement**

8. The purpose of enforcement is to:

- Ensure that duty holders take action to deal immediately with serious risks;
- Promote and achieve sustained compliance;
- Ensure that duty holders who breach Health and Safety requirements, and directors and managers, who fail in their responsibilities, may be held to account. This may include bringing the alleged offenders before the courts.

### **The Process of Enforcement**

9. Inspectors use various enforcement techniques to deal with risks and secure compliance with the law, ranging from the provision of advice to enforcement notices.
10. Enforcement decisions must be impartial, justified and procedurally correct. The Health and Safety Executive's Enforcement Policy Statement (EPS) sets out the approach we follow.
11. The Enforcement Management Model (EMM) provides the Council with a framework for making enforcement decisions that meet the principles in the EPS. It captures the issues inspectors consider when exercising their professional judgment and reflects the process by which enforcement decisions are reached.

### **The Purpose of the EMM**

12. The EMM is not a procedure in its own right. It is not intended to fetter inspectors' discretion when making enforcement decisions, and it does not direct enforcement in any particular case. It is intended to:
  - Promote enforcement consistency by confirming the parameters, and the relationships between the many variables, in the enforcement decision making process;
  - Promote proportionality and targeting by confirming the risk based criteria against which decisions are made;
  - Be a framework for making enforcement decisions transparent, and for ensuring that those who make decisions are accountable for them; and
  - Help experienced inspectors assess their decisions in complex cases, allow peer review of enforcement action, and be used to guide less experienced and trainee inspectors in making enforcement decisions.
13. The EMM and the associated procedures enable managers to review the decision making process and their inspectors' enforcement actions to ensure the purpose and expectations of the EPS have been met.
14. The EMM does not exist in isolation. It is supported by quality procedures which address, amongst other things, the selection and investigation of accidents.

### **Enforcement Tools**

15. The Council has a range of tools to seek compliance with the law and to ensure a proportionate response to criminal offences. Where appropriate we may:

- Serve Improvement and Prohibition Notices
- Prosecute
- In very exceptional circumstances issue Formal Cautions.

16. Formal Cautions will not be used –

- As a let off
- Where there are some mitigating circumstances
- Where there is doubt about the public interest.
- Where either the prosecutor's office or the court are too busy.

### **Complaints Procedure**

17. Complaints are dealt with by the Council's complaints procedure.

### **The Procedures and Principles of Enforcement**

18. When the Council makes decisions about enforcement it will apply the following principles of *proportionality* in applying the law and securing compliance; *consistency* of approach; *targeting* of enforcement action; *transparency* about how the regulator operates and what those regulated may expect; and *accountability* for the regulator's actions.

#### ***Proportionality***

19. Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by the Council to achieve compliance should be proportionate to any risks to Health and Safety or to the seriousness of any breach, which includes any actual or potential harm arising out of a breach of law.

20. Some Health and Safety duties are specific and absolute. Others require action as far as is reasonably practicable. We will apply the principle of proportionality in relation to both kinds of duty.

21. Deciding what is reasonably practicable to control risks involves the exercise of judgment. In the final analysis, it is the courts that determine what is reasonably practicable in a particular case. Where duty holders must control risks so far as is reasonably practicable, we will, when considering protective measures taken by them, take account of the degree of risk on the one hand, and on the other the cost, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is a gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.

22. We will expect relevant good practice to be followed. Where, in particular cases, this is not clearly established, Health and Safety law effectively requires duty holders to assess the significance of the risks to determine what action needs to be taken.

Some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences. Conversely some risks may be so small that spending more to reduce them would not be expected.

### ***Targeting***

23. Targeting means making sure that contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it whether employers, or others.
24. The Council has a system for prioritising contacts according to the risks posed by a duty holder's operations, and to take account of the hazards and the nature and extent of the risks that arise. The duty holder's management competence is an important factor. Certain very high hazard sites will receive regular inspections so that we can give public assurance that such potentially serious risks continue to be effectively managed.
25. Enforcement action will be directed against duty holders who may be employers in relation to workers or others exposed to risk, the self employed the owner of the premises, the supplier of the equipment, the designer or client of the project. Where several duty holders have responsibilities we will take action against those who are primarily in breach.
26. When our inspectors issue improvement prohibition notices, prosecute or in exceptional circumstances issue formal cautions, we will ensure that a senior officer of the duty holder concerned, at board level, is also notified.

### ***Consistency***

27. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
28. Duty holders managing similar risks expect a consistent approach from us in the advice tendered; the use of enforcement notices etc; decisions on whether to prosecute; and in the response to incidents.
29. In practice consistency is not a simple matter. Our enforcement officers are faced with many variables: the severity of the hazard, the attitude and competence of management, the duty holder's accident history. Decisions on enforcement action are discretionary, involving judgment by the officer. The Council has arrangements in place to promote consistency in the exercise of discretion, and these include liaison arrangements with the other enforcing authorities and the Health and Safety Executive.

### ***Transparency***

30. Transparency means helping duty holders to understand what is expected of them and what they should expect from us. It also means making clear to duty holders not

only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

31. It also involves us in having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements have regard to legal constraints and requirements.
32. We will tell you what to expect when an inspector calls and what rights of complaint are open to you. All our health and safety inspectors are required to issue "What to expect when a health and safety inspector calls" whenever they visit. This publication explains what employers and employees and their representatives can expect when a health and safety inspector calls at a workplace. In particular:
  - When inspectors offer duty holders information, or advice, face to face or in writing, including any warning, they will tell the duty holder what to do to comply with the law, and explain why. If asked Inspectors will confirm any advice in writing and distinguish legal requirements from best practice advice
  - In the case of improvement notices, the inspector will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when.
  - In the case of a prohibition notice, the notice will explain why the prohibition is necessary.

### ***Accountability***

33. Regulators are accountable to government, citizens and Parliament for their actions. This means that we have policies and standards (such as the four enforcement principles above) against which we can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.
34. We have a corporate complaints procedure. Where a notice is served there is a right of appeal to an Employment Tribunal.

### **Investigation**

35. The Health and Safety Executive expects us to use discretion in deciding whether incidents, complaints or cases of ill health should be investigated.
36. In selecting which complaints or reports of incidents, injury or occupational ill health to investigate and in deciding the level of resources to be used, account of the following factors is taken:
  - the severity and scale of potential or actual harm;
  - the seriousness of any potential breach of the law;
  - knowledge of the dutyholder's past health and safety performance;
  - the enforcement priorities;
  - the practicality of achieving results;
  - the wider relevance of the event, including serious public concern.

37. In conducting our investigations we will take account of any likely complimentary or shared enforcement roles, e.g. where the HSE has jurisdiction over some of the activities of a duty holder and we have jurisdiction over the rest of the activities. We will also refer relevant information to other Regulators where there is a wider regulatory interest e.g. the HSE or to the Lead Authority of a duty holder within the Lead Authority Partnership Scheme.
38. We will carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so, for example because the police consider the cause to have been suicide.

## **Prosecution**

39. We will use discretion in deciding whether to initiate a prosecution. Our primary purpose is to help prevent harm, and while prosecution can draw attention to the need for compliance with the law, other approaches to enforcement can often promote health and safety more effectively.
40. The decision to prosecute will have regard to the evidential and public interest tests set down in England and Wales by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution will go ahead unless there is sufficient evidence to provide a realistic prospect of conviction, and prosecution would be in the public interest.
41. Whilst our primary purpose is to ensure that duty holders manage and control risks effectively thus preventing harm, prosecution is an essential part of enforcement. Where the Council has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors that it is in the public interest to prosecute then that prosecution should go ahead. Where circumstances warrant it and the evidence to support a case is available we will prosecute without prior warning or recourse to alternative sanctions.
42. Subject to these two tests we will normally prosecute, or recommend prosecution, where following an investigation or other regulatory contact, the following circumstances apply. Where:
  - death was a result of a breach of the legislation;
  - the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
  - there has been reckless disregard of health and safety requirements; there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
  - work has been carried out without or in serious breach of an appropriate licence;
  - a duty holders standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;

- there has been a failure to comply with a written warning or an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a formal caution;
- inspectors have been intentionally obstructed in the lawful course of their duties; or,
- false information has been wilfully supplied, or there has been an intent to deceive.

43. We will also consider prosecution, or consider recommending prosecution where, following an investigation or other regulatory contact, the following circumstances apply.

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law.
- A breach that gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

44. Where inspectors are assaulted we will also seek police assistance with a view to seeking the prosecution of offenders.

### ***Prosecution of Individuals***

45. Subject to the above we will identify and prosecute individuals if we consider that a conviction is warranted and can be secured. Additionally we will actively consider the management chain and the role played by individual directors and managers. We will take action against them where it can be shown that the offence was committed with their consent or connivance or to have been attributable to neglect on their part. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

### **Publicity**

46. We will make arrangements for the publication annually of the names of all the companies and individuals who have been convicted in the previous 12 months of breaking Health and Safety law. We will also make arrangements for making publicly available information on those convictions and on improvement and prohibition notices which we have issued.

47. We will also consider drawing media attention to factual information about charges that have been laid before the courts, having due regard to publicity that could prejudice a fair trial. We will also consider publicising any conviction that could serve to draw attention to the need to comply with Health and Safety requirements, or deter anyone tempted to disregard their duties under Health and Safety law.

### **Action by the Courts**

48. Where appropriate we will draw the court's attention to all the factors that are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given some guidance on some of the factors that should inform the courts in Health and Safety cases (R v F. Howe and Son (Engineers) Ltd [1999] 2 All ER, and subsequent judgments).

### **Representation to the Courts**

49. In cases of sufficient seriousness, and when given the opportunity, we will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make we will have regard to Court of Appeal guidance: the Court of Appeal has said; "In our judgment magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence".

### **Death at Work**

50. Where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter. We will liaise with the Police, Coroners and the Crown Prosecution Service and if they find evidence suggesting manslaughter or corporate manslaughter pass it on to the Police or where appropriate the CPS. If the Police or the CPS decides not to pursue a manslaughter or corporate manslaughter case, we will bring a Health and Safety prosecution if that is appropriate. (To ensure decisions on investigation and prosecution are co-ordinated the HSE, the Association of Chief Police Officers and the CPS have jointly agreed and published "Work Related Deaths: A Protocol for Liaison. The Council has agreed that it should take account of the Protocol when responding to work-related deaths.)