



TRAFFORD
COUNCIL

HEALTH AND SAFETY ENFORCEMENT POLICY

**PUBLIC PROTECTION SERVICE
TRAFFORD COUNCIL**

May 2010

Introduction

This document is to let you know how the Council enforces health and safety legislation. It will also tell you what to expect from enforcement officers when they visit your business, and what guides them when carrying out inspections and dealing with breaches in the law.

The Council has a Corporate Enforcement Policy which outlines the general approach the Council take when considering enforcement action. This policy builds on the Corporate Enforcement Policy, and outlines in detail the approach taken by the Public Protection Service's Environmental Health Team in relation to health and safety enforcement.

The Council has formally adopted the central and local government Concordat on Good Enforcement. This enforcement policy is also in accordance with the Regulator's Compliance Code.

Aim

The aim of this Policy is to ensure that duty holders manage and control risks effectively, thus preventing harm. In particular our policy is to:

- Ensure that duty holders take immediate action to deal with serious risks;
- Promote and achieve sustained compliance with the law;
- Ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts in the circumstances set out later in this policy.

The term "enforcement" has a wide meaning and applies to all dealings between the Council and those on whom the law places duties (employers, the self-employed, employees and others).

The Council believes in firm but fair enforcement of health and safety law in line with Health and Safety Executive's (HSE) Enforcement Policy Statement (EPS). This is 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 and are explained more fully in our Principles of Enforcement document (Annex 1).

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.

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 holders information and advice. Where appropriate our Inspectors may also serve Improvement and Prohibition Notices and prosecute.

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 prosecutor finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.

Where circumstances warrant it and the evidence to support a case is available we may prosecute without prior warning or recourse to alternative sanctions.

Subject to the two tests, circumstances where we will normally prosecute, or recommend prosecution, following an investigation or other regulatory contact are 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;
- a duty holder's 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.

Where inspectors are assaulted we will also seek police assistance with a view to seeking the prosecution of offenders. 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. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

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 Standard (including the EPS).

The HSE's priorities are used to target our activities and resources via our Health & Safety Service 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.

Our health and safety team will aim to:

- Inspect those premises for which it has enforcement responsibility and investigate accidents and complaints in accordance with the Council's selection criteria policy;
- Rate premises according to risk, (which includes management organisation, and the type of activities etc) in order to determine the frequency of future inspections;
- Seek to promote health and safety through advice and guidance, and by the provision of training;
- Take formal enforcement action, in accordance with the EPS, when it is the most appropriate way of dealing with the matter.

Where we can we will endeavor to make provision for the particular interests of stakeholders. For example, we may make visits out of normal office hours at times when the business is open; or we may arrange for interpreters/translators to be available if particular groups of duty holders do not have English as a first language.

If you wish to discuss or comment on our enforcement policy or Service Plan please contact us:

Environmental Health
Trafford Town Hall
Talbot Road
Stretford
Manchester
M32 0YJ

Email: environmental.health@trafford.gov.uk

Telephone: 0161 912 4916/4918
Fax: 0161 912 4917

This policy will be reviewed periodically and further developed to take account of customer feedback.

Annex 1 – Principles of Enforcement

The Council believes in firm but fair enforcement of health and safety law. 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.

The Purpose of Enforcement

The purpose of enforcement is to:

- ensure that dutyholders take action to deal immediately with serious risks;
- promote and achieve sustained compliance;
- ensure that dutyholders 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 in England and Wales, in the circumstances set out in HSE's EPS.

The Process of Enforcement

Inspectors use various enforcement techniques to deal with risks and secure compliance with the law, ranging from the provision of advice to enforcement notices.

Enforcement decisions must be impartial, justified and procedurally correct. The HSE's EPS sets out the approach we follow.

The Enforcement Management Model (EMM), together with the procedure for its application, 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 judgement and reflects the process by which enforcement decisions are reached.

The Purpose of the EMM

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.

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.

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

Inspectors have a range of tools at their disposal to seek compliance with the law and to ensure a proportionate response to criminal offences. Where appropriate they may:

- Serve Improvement and Prohibition Notices;
- Prosecute;
- In very exceptional circumstances issue Simple Cautions (Home Office Circular 30/2005).

Simple 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

Complaints are dealt with by our standard complaints procedure, which is detailed on the Council's website at

<http://www.trafford.gov.uk/CouncilAndDemocracy/Complaints/CorporateComplaints>

The Procedures and Principles Of Enforcement

Proportionality

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.

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

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.

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

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.

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.

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, or the supplier of the equipment, or the designer or client of the project. Where several duty holders have responsibilities we will take action against those who are primarily in breach.

When our inspectors issue improvement or prohibition notices or 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

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

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.

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 HSE.

Transparency

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.

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.

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 will issue the leaflet "What to expect when a health and safety inspector calls" (where appropriate) and/or explain 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

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. Where a notice is served there is a right of appeal to an Employment Tribunal.

Investigation

As with prosecution (see below), the HSE expects us to use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. The HSE's priorities and how we target our activities and resources are described in our annual Health and Safety Service Plan.

To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances. It is neither possible nor necessary for the purposes of the Act to investigate all issues of non compliance with the law that are uncovered in the course of planned inspection, or reported events.

Investigations are undertaken in order to determine:

- causes;
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- lessons to be learnt and to influence the law and guidance;
- what response is appropriate to a breach of the law.

The Council will carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so, in which case those reasons should be recorded.

In selecting which complaints or reports of injury or occupational ill health to investigate and in deciding the level of resources to be used, the Council will take account of the following factors:

- severity and scale of potential or actual harm;
- seriousness of any potential breach of the law;
- duty holder's known past health and safety performance;
- enforcement priorities;
- practicality of achieving results;
- wider relevance of the event, including serious public concern.

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 share relevant information with other Regulators where there is a wider regulatory interest e.g. the HSE, the Lead Authority of a duty holder within the Lead Authority Partnership Scheme, or a Primary Authority within the Primary Authority Partnership Scheme.

Prosecution

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.

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 prosecutor finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.

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 an investigation 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.

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;
- false information has been wilfully supplied, or there has been an intent to deceive.

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.

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

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

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

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 [1992] 2 All ER, and subsequent judgments).

Representation to the Courts

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

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. We will liaise with the Police, Coroners and the Crown Prosecution Service and if they find evidence suggesting manslaughter, pass it on to the Police or where appropriate the CPS. If the Police or the CPS decide not to pursue a 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. Trafford Council has agreed that it should take account of the Protocol when responding to work-related deaths.)