

HEALTH AND SAFETY ENFORCEMENT POLICY



PUBLIC PROTECTION DEPARTMENT

Health and Safety Enforcement Policy
Issue No: 1
Issue Date: 14/03/03
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Introduction

- 1.4 This policy is consistent with the Health and Safety Commission (HSE) Enforcement policy statement, ensuring that the enforcement of health and safety law is determined by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how the department operates and what those regulated may expect; and accountability for the Departments Action.
- 1.5 The Department fully acknowledges and endorses the right of individuals and will ensure that all enforcement action occurs in strict accordance with the Police and Criminal Evidence Act 1984, the Human Rights Act 1998, and the Regulation of Investigating Powers Act 2000.
- 1.6 Inspections and other enforcement action will be in accordance with Approved Codes of Practice and Guidance issued by the Health and Safety Commission (HSE), Health and Safety Executive (HSE) and the HSE/Local Authorities Enforcement Liaison Committee (HELA).

2.0 Proportionality

All enforcement action will be proportionate to the health and safety risk and to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.

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

In determining what is “reasonably practicable” we will take account of the degree of risk compared with the sacrifice, whether in money, time or trouble involved in the measures necessary to avert the risk.

Some risks may be so serious that they cannot be permitted.

3.0 Transparency

In carrying out our functions we will help duty holders to understand what is expected of them and what they can expect from this department.

We will endeavour to distinguish what duty holders are required to do by law and what is advice or guidance.

4.0 Accountability

This Department is accountable to the public for its actions. Duty holders will be advised what to expect when an Enforcement Officer calls. Inspecting officers issue the leaflet WHAT TO EXPECT WHEN A HEALTH AND SAFETY INSPECTOR CALLS to those they visit.

If a duty holder has any complaint regarding an officer or inspection, they should in the first instance contact the officer's manager and if they are still not satisfied then write to the Chief Public Protection Officer, Public Protection Department, Crown Buildings, PO Box 1297, Wrexham, LL13 8ZE.

Consistency

We will endeavour to be consistent in our action. We will take a similar approach in similar circumstances to achieve similar ends.

Targeting

We will try and ensure that resources are targeted to areas which give rise to the most serious risks or where the hazards are least well controlled; and that action is focussed on the duty holders who are responsible for the risk and who are best placed to control it – whether employers or employees.

5.0 Enforcement Methods

We will -

- Inspect premises on a routine basis for compliance with the Health and Safety at Work etc Act 1974 and associated guidance and regulations.
- Investigate Accidents
- Provide advice to employers and employees
- Promote health and safety awareness

6.0 Health and Safety Inspections

Inspections are carried out on a priority based system, the frequency of our visits is determined by factors such as the type and size of the premises, the work activity and the health and safety history of the premises.

Sometimes, however, certain categories of premises will be targeted for inspection as part of enforcement campaigns to raise health and safety awareness in certain sectors.

Any action taken as a result of an inspection will be in accordance with the 'Enforcement Options' section of this policy.

7.0 Re-visits

Where significant contraventions of legislation have been found, re-visits will be made to assess compliance. The timing of the re-visit will be determined by the seriousness of the contraventions.

8.0 Accidents/Incidents

Accidents, diseases and dangerous occurrences reported under RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations) will be investigated in line with the department's Accident Investigation Policy. For reporting of accidents see www.riddor.gov.uk.

9.0 Enforcement Options

After considering all relevant information and evidence, if a person or organisation is found to be failing to comply with health and safety regulations the following choices for action will be considered.

- (i) Provide advice and guidance
- (ii) Issue advisory letters
- (iii) Issue Prohibition Notices
- (iv) Issue Improvement Notices
- (v) Prosecute
- (vi) Issue formal caution
- (vii) Seizure of articles and substances

9.1 Informal Action

Informal action to secure compliance with legislation will be used as an enforcement option. Such informal action will include the offering of advice, the issuing of verbal warning and requests for action and the use of advisory letters.

It would be considered appropriate to consider the option of informal action in the following circumstances:

- (i) Having considered the risk to health, circumstances where the consequences of non-compliance with the contravention identified will not pose a significant risk to public health.
- (ii) Acts or omissions which concern only minor matters or technical breaches which are not serious enough to warrant formal action;
- (iii) From the proprietors/businesses' past history, or in the case of new businesses the proprietors willingness to undertake the necessary work.
- (iv) Confidence in the proprietors/business management is high.
- (v) Where matters are identified which do not constitute a breach of regulations or where industry recommended Codes of Practice have not been followed.

When an informal approach is used, written correspondence will be sent to the proprietor and clear differentiation between legal requirements and matters which are recommended as good practice will be made, any verbal advice will be confirmed in writing.

9.2 **Formal Action**

In certain circumstances the service of statutory notices is appropriate.

9.3 **Improvement Notices** – Served under Section 21 Health and Safety at Work etc Act 1974

Prior to serving the notice the following issues will be taken into consideration:-

- (i) Failure by duty holder to have complied with informal requests to undertake actions or a history by the duty holder of non-compliance with informal enforcement.
- (ii) Significant contravention of legislation but where prosecution is not appropriate.
- (iii) Lack of confidence in duty holders willingness to conform.
- (iv) Standards are generally poor with little management awareness of statutory requirements.
- (v) Consequences of non-compliance could be potentially serious to health and safety.
- (vi) Effective action needs to be taken as quickly as possible to remedy conditions which are serious even though there is an intention to prosecute.

Officers using Improvement Notices will discuss with duty holder the works to be specified and realistic time limits within which to comply. The officer will consider alternative solutions put forward by the duty holder to remedy the contravention.

Officers will explain the rights of appeal against the Improvement Notice and the procedure for appealing will be provided in writing. Appeals are made to an Employment Tribunal.

Officers will consider all reasonable written requests for an extension of the time of the Notice.

9.4 **Prohibition Notices**

Where an activity involves, or will involve, a risk of serious personal injury an Environmental Health Officer may serve a prohibition notice prohibiting the activity immediately or after a specified time period, and not allow it to be resumed until remedial action has been taken.

Officers issuing Prohibition Notices will discuss with the duty holder the works to be undertaken. The officer will consider any alternative solutions put forward to remedy the contravention.

Officers will explain the rights of appeal against Prohibition Notices including the fact that the notice is not suspended pending an appeal.

The officer will monitor that the Prohibition Notice is being complied with.

Notice of Taking Possession and Detaining

Officers will use powers to take possession and detain articles or substances when there are reasonable grounds for suspecting that an article or substance is a cause of imminent danger or serious personal injury.

9.5 Legal Proceedings

We will consider instigating legal proceedings where there is admissible, substantial and reliable evidence that an employer, self-employed person, or an individual has committed an offence; that there is a realistic prospect of conviction, and prosecution would be in the public interest.

Subject to the above, the following are circumstances, which may warrant legal proceedings or the recommendation of legal proceedings:

- i) Death was a result of a breach of the legislation;
- ii) 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;
- iii) There has been reckless disregard of health and safety requirements;
- iv) There have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- v) Work has been carried out without or in serious non-compliance with an appropriate licence or safety case;
- vi) 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;
- vii) There has been failure to comply with an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a formal caution;
- viii) False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- ix) Officers have been intentionally obstructed in the lawful course of their duties.

We will also consider legal proceedings, or consider recommending legal proceedings where one or more of the following circumstances apply:

- a) It is appropriate, in the circumstances, as a way of drawing general attention to the need for compliance with the law and the maintenance of standards required by law, especially where there would be a normal expectation that legal proceedings would be taken or where, through the conviction of offenders, others may be deterred from similar failures to comply with the law.

- b) 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.

Enforcement action may be taken against employees, including managers, company director's etc. under Health and Safety at Work etc. Act 1974, Sections 7, 8, 36(1) and 37(1). In particular action against individual directors and managers will be considered where the inspection or investigation reveals that the offence was committed with their consent or connivance or to have been attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy. Where appropriate, we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

Legal proceedings against an employee will be considered if the employee has received previous warnings from either the employing Company or an Enforcement Officer, or if the offence was a flagrant breach of the employing company policy and legislation.

Legal proceedings against persons injured as a result of an accident at work will be considered where a serious breach could have, or did, expose others to a serious risk to health and/or safety.

Once the Officer is of the opinion that Legal Proceedings may be appropriate the case is considered using the matrix in Appendix 1, which determines whether or not legal proceedings are instigated. The matrix incorporates the criteria set down in the Code for Crown Prosecutors.

The Officer will discuss with and advise the Lead Authority, if necessary of the details of any proposed legal proceedings and the outcome.

9.6 Types of Legal Proceedings

If the Evidential Criteria at Appendix 1 indicates that action is appropriate the Public Interest Criteria at Appendix 2 will be considered. Following this is a decision on whether to **Prosecute**, offer a **Formal Caution**, give a **written warning** or take **no action** will be made.

The Department will offer **Formal Cautions** as an alternative to prosecution in order to:

- deal quickly and simply with less serious offences;
- to divert less serious offences away from the Courts; and
- to reduce the chances of repeat offences.

The Department will only make the offer of a formal caution where:

- There is sufficient evidence of the offender's guilt for a realistic prospect of conviction;
- The offender admits the offence; and
- The offender clearly understands the significance of a formal caution and gives informed consent of being cautioned.

Where the offender declines the offer of a formal caution the Council will prosecute.

The procedural document on “Formal Cautions” offers more detailed guidance for officers.

9.7 Representations to the Courts

We will, when appropriate, draw to the Court’s attention all the factors that are relevant to the Court’s decision as to what sentence is appropriate on conviction.

In cases of sufficient seriousness, and when given the opportunity, the council will consider indicating to the Magistrate that the offence is so serious that they may send it to be heard in the higher court where higher penalties can be imposed.

10.0 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. In such cases we will liaise with the Police, Coroners, and the Crown Prosecution Service (CPS). We will also follow the guidance in Work-related deaths: A protocol for liaison. If the Police or the CPS decide not to prosecute then we will consider legal proceedings in line with this document.

11.0 Publicity

This Department notifies HELA (Health and Safety Executive/Local Authority Enforcement Liaison Committee) of all health and safety prosecutions. This information is published annually: the specialist Health and Safety Team hold a copy of the document. The information is also available on the LAU/HELA homepage of the HSE website (www.hse.gov.uk/lau).

We will consider drawing media attention to factual information about charges that have been laid before the courts. We will consider publicising any conviction which 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.

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APPENDIX 1 – EVIDENTIAL TEST

Name and Address

Business Address

Contravention

	Y	N	N/A
Is there sufficient evidence to provide a realistic prospect of conviction for each offence.			
Was the offence investigated without any undue delay which could not be attributed to the actions of the defendant OR The complexity of the offence has meant there has been a long investigation			
Evidence			
Was it legally obtained?			
Is the evidence reliable?			
Is any confession reliable or affected by the defendant's age, intelligence or level of understanding?			
Is any explanation of the defendant likely to be found credible by a Court in light of the evidence as a whole?			
If the identity of the defendant is likely to be questioned is the evidence strong enough?			
Is a witnesses' background likely to weaken the prosecution case?			
Are there concerns over the accuracy or credibility of a witness?			
Does it contain hearsay evidence?			
Was R.I.P.A. complied with?			
Was P.A.C.E. complied with?			
Was the Criminal Procedure and Investigation Act 1996 complied with?			
Administration			
Were any required Statutory notices (a) sent or (b) sent within specified time limits			
Have any Government Bodies e.g. OFT, who need to be notified, been so notified. If so date when notified			

APPENDIX 2 - PUBLIC INTEREST TEST

	Considered	N/A
<p style="text-align: center;">Factors in Favour of a Prosecution</p> <p>A prosecution is likely to be needed if</p> <ul style="list-style-type: none"> (a) Risk of serious injury/dangerous occurrence associated with the alleged offence or incident had serious or potentially serious consequences (b) Previous history of individual/company shows repeated breaches and has not responded to previous enforcement or advice. (c) Individual/company has only addressed issues on a piecemeal or reactive basis. (d) No signs that individual/company has taken or intends to take steps to prevent recurrence. (e) Penalty/publicity is likely to have some effect on other companies/individuals (f) the offence was committed against a person serving the public (for example, a police or prison officer, or a nurse); (g) the defendant was in a position of authority or trust; (h) there is evidence that the offence was premeditated; (i) the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance; (j) the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics; (k) there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption; (l) the defendant's previous convictions or cautions are relevant to the present offence; (m) the offence, although not serious in itself, is widespread in the area where it was committed. 		

PUBLIC INTEREST TEST (cont)

	Considered	N/A
<p style="text-align: center;">Factors Against a Prosecution</p> <p>A Prosecution is less likely to be needed if</p> <p>(a) Individual has positive attitude to safety and is genuinely trying to comply with legal requirements</p> <p>(b) the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);</p> <p>(c) the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;</p> <p>(d) Steps already taken by individual/company to prevent recurrence</p> <p>(e) Penalty/publicity will have limited value</p> <p>(f) there has been a long delay between the offence taking place and the date of the trial, unless:-</p> <ul style="list-style-type: none"> • the offence is serious • the delay has been caused in part by the defendant; • the offence has only recently come to light; or • the complexity of the offence has meant that there has been a long investigation <p>(g) a prosecution is likely to have a bad effect on the victim’s physical or mental health, always bearing in mind the seriousness of the offence;</p> <p>(h) the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated;</p> <p>(i) details may be made public that could harm sources of information, international relations or national security.</p>		

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

When considering whether or not to prosecute the views expressed by the victim/victims family should be taken into account.

Having taken into consideration the points above indicated [✓] the overall assessment of the matter is that

Prosecution/Formal Caution/Written Warning/No Action (delete accordingly)

should be the outcome

Investigating Officer :
Date :

Agree/Disagree, SEHO :
Date :

Agree/Disagree, Environmental Health Manager :
Date :

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