

*Housing and Public Protection  
Department*

*Public Protection Service*

**Health and Safety  
Enforcement Policy**

Issue 2

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Any queries regarding this policy  
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Service on 01978 813700

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## **Introduction**

As an enforcing authority under the Health and Safety at Work etc. Act 1974, Wrexham County Borough Council (the Council) aims to protect the health, safety and welfare of people at work, and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out. The Council enforces health and safety law in a wide range of workplaces within the County Borough including offices, shops, retail and wholesale distribution centres, residential care homes, leisure, hotel and catering premises.

The Health and Safety Executive (HSE) enforces health and safety law in other workplaces including construction sites, farms, factories, government offices, hospitals and nursing care homes. HSE has other statutory functions including proposing new or updated laws and standards, conducting research and providing information and advice. HSE has published guidance for local authorities and HSE's Field Operations Directorate (the Section 18 Enforcement Standard, 'Making a Difference'), which sets out what constitutes adequate arrangements for enforcement of health and safety law.

This Health and Safety Enforcement Policy Statement supplements the Council's Public Protection Service Enforcement Policy and is in accordance the HSE's Enforcement Policy Statement. It sets out the general principles and approach which the Council will follow when enforcing health and safety law. All Council staff taking health and safety enforcement decisions are required to follow the Health and Safety Enforcement Policy Statement. In general, those staff will be inspectors, so this policy refers to inspectors for simplicity. The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare. In allocating resources, the Council will have regard to the principles set out below, the Council's priorities, the Section 18 Enforcement Standard, the objectives published in the HSE Business Plan and the HSE Strategy. The Council will maintain a balance between enforcement, inspection and investigation, and other activities such as the provision of guidance and advice.

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

### **The purpose and method of enforcement**

1. The ultimate purpose of Wrexham County Borough Council in its role as an enforcing authority under the Health and safety at Work etc Act 1974 is to ensure that dutyholders manage and control risks effectively, thus preventing harm. The term 'enforcement' has a wide meaning and applies to all dealings between an enforcing authority and those on whom the law places duties (employers, the self-employed, employees and others).
2. The purpose of enforcement is to:
  - ensure that dutyholders take action to deal immediately with serious risks;
  - promote and achieve sustained compliance with the law;
  - ensure that dutyholders who breach health and safety requirements, and directors or managers who fail in their responsibilities, may be held to account. This may include bringing alleged offenders before the courts in the circumstances set out later in this policy.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

3. The Council has a range of tools at its disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Inspectors may offer dutyholders information, and advice, both face to face and in writing. This may include warning a dutyholder that in the opinion of the inspector, they are failing to comply with the law. Where appropriate, inspectors may also serve improvement, prohibition notices, issue simple cautions\* and/or prosecute offenders.

\* A simple caution is a statement by an inspector, which is accepted in writing by the dutyholder, that the dutyholder has committed an offence for which there is a realistic prospect of conviction. A simple caution may only be used where a prosecution could be properly brought. A 'simple caution' is not the same as a caution given under the Police and Criminal Evidence Act 1984 by an inspector before questioning a suspect about an alleged offence. The Council will take account of current Home Office guidelines and HSE guidance when considering whether to offer a simple caution.

4. Giving information and advice, issuing improvement or prohibition notices are the main means which inspectors use to achieve the broad aim of dealing with serious risks, securing compliance with health and safety law and preventing harm. Improvement and prohibition notices, and written advice, may be used in court proceedings.

- A prohibition notice stops work in order to prevent serious personal injury. Information on improvement and prohibition notices should be made publicly available.
- Every improvement notice contains a statement that in the opinion of an inspector an offence has been committed.

5. Prosecution or, if appropriate, simple cautions are important ways to bring dutyholders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, Wrexham County Borough Council will consider prosecution or simple caution independently of the issue of any improvement or prohibition notice.

6. Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, Wrexham County Borough Council will have regard to the principles of enforcement set out in this statement, the Council's priorities, the Section 18 Enforcement Standard, the objectives published in the HSE Business Plan and the HSE Strategy. In particular, in allocating resources, Wrexham County Borough Council will aim for a balance between investigations, preventive activity and providing guidance and advice.

7. Sometimes the law is prescriptive – spelling out in detail what must be done. However, much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. Advice on how to achieve the goals is often set out in Approved Codes of Practice (ACOPs). These give practical advice on compliance and have a special legal status. If someone is prosecuted for a breach of health and safety law and did not follow the relevant provisions of an ACOP, then the onus is on them to show that they complied with the law in another way. Good practice advice is also contained in other guidance material published by HSE and other bodies. Following this guidance is not compulsory, but doing so is normally enough to comply with the law. Neither ACOPs nor guidance material are in terms which necessarily fit every case. In considering whether the law has been complied with, inspectors will take relevant ACOPs and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them.

8. Wrexham County Borough Council will use discretion in deciding when to investigate or what enforcement action may be appropriate. The Council has written procedures that cover the decision-making processes which inspectors will follow when deciding on enforcement action. These procedures will be made available to the public.

## **The principles of enforcement**

9. The Council believes in firm but fair enforcement of health and safety law. This includes the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how the Council operates and what those regulated by the Council may expect; and accountability for the Council's actions. These principles apply both to enforcement in particular cases and to the way the Council manages its health and safety enforcement activities as a whole.

### **Proportionality**

10. Proportionality means relating enforcement action to the risks.\* Those whom the law protects and those on whom it places duties (dutyholders) expect that action taken by enforcing authorities to achieve compliance or bring dutyholders to account for non-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 from a breach of the law.

\* In this policy, 'risk' (where the term is used alone) is defined broadly to include a source of possible harm, the likelihood of that harm occurring, and the severity of any harm.

11. In practice, applying the principle of proportionality means that enforcing authorities should take particular account of how far the dutyholder has fallen short of what the law requires and the extent of the risks to people arising from the breach.
12. Some health and safety duties are specific and absolute. Others require action 'so far as is reasonably practicable'. The Council will apply the principle of proportionality in relation to both kinds of duty.
13. Deciding what is 'reasonably practicable' to control risks involves the exercise of judgement. Dutyholders must take account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the dutyholder must take measures and incur costs to reduce the risk.
14. The Council expects relevant good practice to be followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires dutyholders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is 'reasonably practicable' in particular cases.
15. Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences.

### **Targeting**

16. Targeting means making sure that interventions are focussed primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. It also means focussing action on the dutyholders who are responsible for the risk and who are best placed to control it.
17. The Council's systems for prioritising inspections, investigations or other regulatory contacts takes account of the nature and extent of risks posed by a dutyholder's operations. The dutyholder's management competence is important, because a relatively low hazard site poorly managed can cause greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place.

18. Any enforcement action will be directed against dutyholders responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves. Where several dutyholders have responsibilities, the Council may take action against more than one when it is appropriate to do so in accordance with this policy.
19. When inspectors issue improvement or prohibition notices; issue simple cautions; or prosecute; the Council will ensure that the dutyholder or a senior representative of the dutyholder, at board level, is also notified.

## Consistency

20. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
21. Dutyholders managing similar risks expect a consistent approach from enforcing authorities in the advice tendered; the use of enforcement notices; decisions on whether to prosecute; and in the response to incidents.
22. The Council recognises that in practice consistency is not a simple matter. HSE and local authority inspectors are faced with many variables including:
  - the degree of risk,
  - the attitude and competence of management,
  - any history of incidents or breaches involving the dutyholder,
  - previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law.
23. Decisions on enforcement action are discretionary, involving judgement by the inspector. The Council has arrangements in place to promote consistency in the exercise of discretion, including the appropriate use of enforcement models (e.g. the Enforcement Management Model). Effective arrangements are also in place for liaison with other enforcing authorities, for example where a dutyholder has a Primary Authority or Lead Authority.

## Transparency

24. Transparency means helping dutyholders to understand what is expected of them and what they should expect from the Council. It also means making clear to dutyholders not only what they have to do and, 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.
25. The Council also has arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements have regard to legal constraints and requirements.
26. Dutyholders, employees, their representatives and others need to know what to expect when an inspector calls and what rights of complaint are open to them. Complaints procedures are set out in the **Public Protection Service Charter**, which is available on the Council's website. In addition inspectors will issue the information contained in the HSE leaflet *What to expect when a health and safety inspector calls* to those they visit. This 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 dutyholders information, or advice, face to face or in

- writing, including any warning, inspectors will tell the dutyholder what to do to comply with the law, and explain why. Inspectors will, if asked, write to confirm any advice, and to 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, and that in the inspector's opinion a breach of the law has been committed;
- in the case of a prohibition notice the notice will explain why the prohibition is necessary.

## Accountability

27. Regulators are accountable to the public for their actions. This means having policies and standards (such as the four enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.
28. The Council's procedures for dealing with comments and handling complaints are set out in the **Public Protection Service Charter** and in the information contained in the HSE leaflet *What to expect when a health and safety inspector calls*. In particular, they:
- describe a complaints procedure in the case of decisions by officials, or if
  - procedures have not been followed; and
  - explain about the right of appeal to an Employment Tribunal in the case of statutory notices.

## Investigation

29. The Council uses discretion in deciding whether incidents, cases of ill health, or complaints about work related health and safety should be investigated. 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;
  - what response is appropriate to a breach of the law.
30. To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. The Council recognises that it is neither possible nor necessary for the purposes of the Health and Safety at Work etc Act 1974 to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspection, or in the investigation of reported events.
31. A site investigation of a reportable work-related death will be carried out, unless there are specific reasons for not doing so, in which case those reasons will be recorded.
32. 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, the Council will take account of the following factors:
- 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;
- our enforcement priorities;
- the practicality of achieving results;
- the wider relevance of the event, including serious public concern.

33. The Council has written procedures for the selection of complaints and reports of incidents, injury or occupational ill health for investigation. These arrangements take account of relevant guidance for enforcing authorities published as part of the Section 18 Enforcement Standard – “Make it Happen.”

## **Prosecution**

34. The decision whether to prosecute will take account of the evidential stage and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. A prosecution will only go ahead if there is sufficient evidence to provide a realistic prospect of conviction, and the prosecution is in the public interest.

35. While the primary purpose of the Council as an enforcing authority is to ensure that dutyholders manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement. Where in the course of an investigation 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 there is a presumption that the prosecution should go ahead.

36. In accordance with the Code for Crown Prosecutors the decision to prosecute will be kept under continuous review, so that any new facts or circumstances, in support of or undermining the prosecutions’ case, are taken into account in the decision to continue or terminate the proceedings. Where the circumstances warrant it and the evidence to support a case is available, the Council may prosecute without prior warning or recourse to alternative sanctions.

37. Subject to the above, Wrexham County Borough Council, in the public interest, will normally prosecute where, following an investigation or other regulatory contact, one or more of 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 non-compliance with an appropriate licence;
- a dutyholder’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;
- there has been a failure to comply with an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a simple caution;
- 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;

- inspectors have been intentionally obstructed in the lawful course of their duties.
38. Health and safety sentencing guidelines regard death resulting from a criminal act as an aggravating feature of the offence. If there is sufficient evidence that the breach caused the death, the Council will normally bring such cases before the court. However, there will be occasions where the public interest does not require a prosecution, depending on the nature of the breach and the surrounding circumstances of the death.
39. In the public interest, the Council will consider prosecution where following an investigation or other regulatory contact, one or more of 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 which gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.
40. Where inspectors are assaulted, the Council will inform the police, with a view to seeking the prosecution of offenders.

### **Prosecution of individuals**

41. Subject to the above, the Council will identify and prosecute individuals if it is considered that a prosecution is warranted. The Council will pay particular attention to the management chain and the role played by individual directors and managers. Where necessary the Council will take action where it finds that an offence was committed with the consent or connivance of directors or managers or was attributable to neglect on their part. Where appropriate, enforcing authorities should seek disqualification of directors under the Company Directors Disqualification Act 1986.

### **Publicity**

42. The Council will make arrangements for the publication annually of the names of all the companies and individuals who have been prosecuted by the Council and convicted in the previous 12 months of breaking health and safety law. The Council will also make information on these convictions and on relevant improvement and prohibition notices\* that its inspectors have issued available to the public.

\* A relevant notice under the Environment and Safety Information Act 1988 is a notice that does not impose requirements or prohibitions solely for the protection of persons at work.

43. The Council will also consider in all cases drawing media attention to factual information about charges which have been laid before the courts, but great care must be taken to avoid any publicity which could prejudice a fair trial. The Council will also 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.

### **Action by the courts**

44. Health and safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences. Unlimited fines may be imposed by higher courts. The Council will continue to seek to raise the courts' awareness of the gravity of health and safety offences and of the full extent of their sentencing powers, while

45. The Council will, when appropriate, draw to the court's attention all the factors which are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given guidance on some of the factors which should inform the courts in health and safety cases (*R v F Howe and Son (Engineers) Ltd* [1999] 2 All ER, and subsequent judgments). The Lord Chancellor has said that someone injured by a breach of health and safety legislation is no less a victim than someone who is assaulted.

## Representations to the courts

46. In cases of sufficient seriousness, and when given the opportunity, the Council 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, the Council will have regard to Court of Appeal guidance: the Court of Appeal has said 'In our judgement 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

47. Where there has been a breach of the law leading to a work-related death, the Council will consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter.

48. To ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, HSE, the Association of Chief Police Officers (ACPO), the British Transport Police, the Crown Prosecution Service (CPS), the Local Government Association (LGA) and the Office of Rail Regulation (ORR) have jointly agreed and published **Work-related deaths: A protocol for liaison**. Other non-signatory organisations, such as the Maritime and Coastguard Agency (MCA), Civil Aviation Authority (CAA) and the Chief Fire Officers Association (CFOA), have agreed that they will take account of the protocol when responding to work-related deaths.

49. The police are responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges. The Council is responsible for investigating possible health and safety offences. If in the course of their health and safety investigation, the inspectors find evidence suggesting manslaughter or corporate manslaughter, it will be passed on to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, the Council will normally bring a health and safety prosecution in accordance with this policy.

## Feedback and Comments

50. We welcome feedback on this or any of our policies – please direct any feedback or comments on this Enforcement Policy to:

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### **Further information**

More information about the way health and safety legislation is enforced and about health and safety legislation generally can be found on the Council's website [www.wrexham.gov.uk](http://www.wrexham.gov.uk) and the HSE website [www.hse.gov.uk](http://www.hse.gov.uk)