

Public Protection

Health & Safety Enforcement Policy

Introduction

Public Protection and specifically the health and safety team's aims are to protect the health, safety and welfare of people at work and others who may, as a result of a work activity be exposed to risk or harm, including members of the Public.

Public Protection recognise the statutory obligations to ensure information, guidance and adequate arrangements are made for the enforcement measures deemed necessary for health and safety in regard to work activities, in accordance with and not to raise conflict to the principles set by the Health & Safety Executive.

This policy is written according to the Regulators Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006 which sets out general principles to which Enforcement Officers shall have full regard. All Public Protection Environmental Health officers authorised for health and safety duties, to include all enforcement decisions, shall follow the Health & Safety Executive enforcement policy statement and this Policy.

It is an expectation that all Environmental Health Officers engaged for the purpose of conducting inspections, advisory or enforcement activities in terms of Health & Safety as defined in the Health & Safety at Work Act 1974; shall do so through controlled and appropriate use of the powers as designated in the enabling act. Namely the use of enforcement notices, improvement notices, prohibition notices and prosecution proceedings. All Environmental Health Officers authorised by Public Protection under the enabling act shall recognise and submit that all officers are held accountable as individual authorised officers in the event of failures to safeguard health, safety and welfare.

Public Protection – Health and Safety officers shall have regard to the principles of the Health & Safety Executive business plan and the need to maintain a recognisable, controlled balance between enforcement measures and other activities that may include intervention, surveillance and advice.

Enforcement

The ultimate purpose of the Health & Safety enforcing authorities is to ensure that Duty Holders manage and control risks effectively, so preventing harm. 'enforcement' as a term is not to be seen only as a term of punishment; but as a wide definition. The Public Protection team determines 'enforcement' to mean many activities or actions that have contact, influence or streamed change within an organisation, and/or with regards to an individual and/or duty

holder – to include employers, employees, self-employed, contractors and volunteers.

The basic ethos for enforcement is:

- To ensure that Duty Holders take action or steps to deal immediately with serious risk.
- To promote, encourage and achieve sustained compliance with the law.
- To ensure the Duty Holders who breach the law in terms of Health and Safety at Work Act and all regulations therein; to include Directors/managers who fail in their responsibilities in regard to health and safety, may be held accountable either in part or in full. Further to this may include bringing alleged offenders to the fore to face any enforcement/prosecution or legal proceedings as deemed appropriate by the enforcement body (Public Protection).

Enforcement shall only be carried out in respect of criminal breaches; civil proceedings will not be undertaken under any circumstances, or involvement in civil claims, nor assist in such claims.

Enforcement Tools

Public Protection authorised officers (under sections: 20, 21, 22, 23, 25 of Health and Safety at Work etc. Act 1974) have a range of enforcement tools and these shall include:

- Advice and guidance to Duty Holders on compliance, this may be in the form of verbal advice, written guidance and where deemed appropriate, a site visit to offer advice and practical guidance.
- Written warnings where breaches are discovered but of a lesser, non-immediate nature.
- Improvement notices where breaches are discovered and require quick resolution to prevent harm and to comply with the law; or following written warning that has not been implemented. The service of improvement notices shall be in line with Public Protection staged enforcement protocol, unless the risk of harm and speed of reaction required is such that the staged process must be by-passed or accelerated.
- Prohibition Notices can be used either as a standalone notice or in conjunction with an improvement notice, where the circumstances are such that by compliance with the improvement notice removes the risk that requires the prohibition notice. Prohibition notices can only be served by specifically authorised Environmental Health Officers under section 22 of Health and Safety at Work etc. Act 1974 and in any case shall be validated by a Senior Environmental Health Officer having due authorisation under section 22 of the said Act; and deemed competent and experienced by way of regular, measured recorded competency parameters as set by the designated team leader for Health & Safety.
- Vary licence conditions where licenced activities are deemed necessary.

- Simple Cautions where the staged approach and EMM patterns indicate that the offences are of a lesser degree and/or the Duty Holder is a first time offender and all indications show remedial actions have been implemented. Simple cautions must be used only where the offender agrees full acceptance of the caution and where sufficient evidence has been obtained that would eventuate a criminal conviction if it were to go before the court.

Where insufficient evidence is found simple caution and/or prosecution shall not be progressed.

All legal cases and strict enforcement steps shall be subject to scrutiny to avoid any indications of abuse of power, unnecessary delay in either investigations or proceeding to court.

All notices (improvement and prohibition) shall be clearly and unambiguously written by the inspecting or enforcement officer. Rights of Appeal notices shall be made available.

In the event of legal proceedings defendants will be offered a recorded interview under caution with due regard to the PACE requirements. In the event of a recorded interview, defendants shall be sent an evaluation form to determine if the defendant has any disabilities, language or 'other' requirements that may be deemed as equality and capability needs.

In the event of a defendant/defendants declining to attend a recorded interview under caution. The investigation officer shall offer a postal interview or a refusal declaration issued by the Health & Safety team leader.

Resources and Level of Investigation

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 enforcing officers should have regard to the principles of enforcement set out in this policy and that of the Health and Safety Executive Business Plan. In particular, in allocating resources (officer time, surveillance, testing etc.), the Public Protection team lead shall evaluate the risk, severity and case circumstances and strike a consistent balance between investigations and preventative activity.

Benchmarking and the use of Approved Code of Practices are deemed to be appropriate in terms of advice and guidance for Duty Holders to achieve practical, consistent compliance. Where resources are diminished investigation and inspection may be 'discretionary'. However the Public Protection enforcement mechanism system may be applied to add consistency in approach and eventual justification means. This and the Health & Safety Executive expectation that local authority officers shall have

regard to the Regulators Code of Compliance and the Regulatory Reform Act 2006 as amended (10).

Public Protection believes in firm but fair enforcement of all Health & Safety Law, to do this the Public Protection team shall hold principles of proportionality in the application of the law and achieving compliance; consistency of approach; targeted action in terms of all enforcement; transparency of process and expectation; officer and departmental accountability.

Proportionality

Relationship of the enforcement action to the risk; “Those whom the law protects and those on whom it places duties (Duty Holders) expect that action taken by enforcement authorities to achieve compliance or bring Duty Holders 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”.

Where there is the possibility of placing extra or unnecessary burden on a company to effect compliance, measures taken must be proportionate, expedient and not bureaucratic in nature.

In determining ‘proportionality’ enforcement authorities shall have regard to the ‘silo’ or shortfall between failure and compliance and the failure of action and the level of foreseeable risk – in respect of reasonably practicable means. Some irreducible risks may be so serious that they cannot be permitted, irrespective of consequences.

Targeted Resources

Targeting means appropriate channelling of resources which the level of risk or the level of control is insufficient and that requires actions by the enforcement authority to be focused on the Duty Holders control and risk reduction.

The Public Protection team have a system to determine where resources are best focused. This includes the use and suitability of programmed interventions, investigations or project work aimed at providing guidance or/and advice.

Where local authority enforced premises are deemed low risk either by activity, control or at risk the Public Protection Health and Safety team shall soft brush manage their activity; interaction, advice and guidance will always be available. Further stages of interaction will be judged by compliance history, Health and Safety management accident reports/trends and complaints. Operational surveillance may be used to locate areas of potential focus and style of intervention warranted.

Therefore the Public Protection team will significantly reduce the level of routine low risk inspections in favour of targeted, measurable intervention work.

Consistency

Consistency monitoring shall be managed by the Health and Safety team leader by way of consistency training, shadowing exercises, periodic auditing and regular CPD training.

Transparency

Public Protection have an expectation that all actions other than authorised covert work shall be conducted in an openly transparent manner so that Duty Holders have full knowledge and comprehension of the legal duties, level of compliance and expected treatment by Environmental Health Officers that they are exposed to. Of particular note is that of prosecution process timescales and events that can cause delays. There is a complaints process available which will enable Duty Holders the opportunity to complain about the service, officer actions or any other matter relating to their treatment, communication or conduct of enforcement officer.

Accountability

All Public Protection authorised enforcement officers are accountable to the public for their actions. This is realised by all authorised officers having demonstrable regard to the four principles stated in this Policy. Actions carried out shall be scrutinised under these principles, via the team leader.

Investigation

Public Protection will decide on the investigation activity as a discreet decision making process based on:

- Cause
- action taken by Duty Holder, to prevent re-occurrence and compliance
- lesson to learn to influence change
- appropriate further action

“The Health & Safety Executive 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 noncompliance with the law which are uncovered in the course of preventative intervention or in the investigation of reported events – namely accidents or complaints”.

Work place deaths should be investigated. When using the discreet decision making process the following factors should be observed:

- Severity and scale of actual harm
- Seriousness of any breach of law
- Knowledge of Duty Holders historical health & safety compliance

- Departmental health and safety priorities in enforcement
- Practicality of achieving results
- Wider relevance in terms of serious public concern

Prosecution

The decision to prosecute will be agreed by the investigation officer, Team Leader, Head of Environmental Services and legal representative from Swindon Borough Council. However, as a general guide Public Protection shall have regard to the method and rationale generally utilised by the Health & Safety Executive – found in the Health & Safety Executive Enforcement Policy which details the following circumstances. The list is an indication only and not exhaustive:

1. Death was a result of a breach of legislation.
2. The gravity of an alleged offence, taken with the seriousness of any actual or potential harm or the general record and approach of the offender warrants it.
3. There has been a reckless disregard of health and safety requirements.
4. Repeated breaches which give rise to significant risk, or persistent and significant poor compliance.
5. Unlicensed work or un-compliant licensed work.
6. Poor management giving rise to significant risk.
7. Failure to comply notice or breach repeated after a caution.
8. Supply of false information, intent to deceive.
9. Officer or investigation obstruction.

Public interest can also lead the decision making process towards prosecution:

- Public awareness of the risks and breaches.
- 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.