

**ROYAL BOROUGH OF KINGSTON
UPON THAMES**

ENVIRONMENTAL HEALTH

**POLICY STATEMENT ON
HEALTH AND SAFETY ENFORCEMENT**

Reviewed October 2011

Enforcement Policy Statement

Introduction

The Royal Borough of Kingston upon Thames aims are 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.

This Enforcement Policy Statement is in accordance with the Regulators' Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006. It sets out the general principles and approach which the health and safety enforcing authorities (mainly Health & Safety Executive and local authorities) are expected to follow. All local authority and HSE staff who take enforcement decisions are required to follow HSE's 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 should have regard to the principles set out below, the objectives published in the HSE Business Plan, and the need to maintain a balance between enforcement and other activities, including inspection.

Local authorities enforce the Health & Safety at Work etc. Act 1974 in respect of certain non-domestic premises, including:

- shops and retailing, including market stalls, coin-operated laundrettes, and mobile vendors;
- most office-based activities;
- some wholesale and retail warehouses;
- hotels, guest houses, hostels, caravan and camping sites, restaurants, public houses and other licensed premises;
- leisure and entertainment, including night clubs, cinemas, social clubs, circuses, sports facilities, health clubs, gyms, riding schools, racecourses, pleasure boat hire, motor-racing circuits, museums, theatres, art galleries and exhibition centres;
- places of worship and undertakers;
- animal care, including livery stables and kennels;
- therapeutic and beauty services, including massage, saunas, solariums, tattooing, skin and body piercing, and hairdressing;
- residential care homes;
- privately run pre-school child care, eg nurseries.

The purpose and method of enforcement

- 1 The ultimate purpose of the Council 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 enforcing authorities 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, which may include bringing alleged offenders before the courts in England and Wales, 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 enforcing authorities have a range of tools at their 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 and prohibition notices, vary licence conditions, issue simple cautions*, and they may prosecute.
- 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. A prohibition notice stops work in order to prevent serious personal injury. Information on improvement and prohibition notices should be made publicly available.
- 5 Every improvement notice contains a statement that in the opinion of an inspector an offence has been committed. Improvement and prohibition notices, and written advice, may be used in court proceedings.

* A simple caution is a statement by an inspector, that 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. 'Simple cautions' are entirely distinct from a caution given under the Police and Criminal Evidence Act 1984 by an inspector before questioning a suspect about an alleged offence. Enforcing authorities should take account of current Home Office guidelines when considering whether to offer a simple caution.

- 6 Prosecution and, 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, enforcing authorities should use one of these measures in addition to issuing an improvement or prohibition notice.
- 7 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 authorities should have regard to the principles of enforcement set out in this statement. In particular, in allocating resources, enforcing authorities must strike a balance between investigations and mainly preventive activity.

- 8 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. Advice is also contained in other HSE guidance material describing good practice. 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 need to 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. More is said about these matters in this statement.
- 9 The Council will use discretion in deciding when to investigate or what enforcement action may be appropriate using the guidance in the HSE Enforcement Management Module (EMM).

The principles of enforcement

- 10 The Council believes in firm but fair enforcement of health and safety law. This should be informed by the 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. These four principles will apply both to enforcement in particular cases and to the Councils management of enforcement activities as a whole.

Proportionality

- 11 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.

- 12 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.
- 13 Some health and safety duties are specific and absolute. Others require action so far as is reasonably practicable. Enforcing authorities should apply the principle of proportionality in relation to both kinds of duty.

- 14 Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where dutyholders must control risks so far as is reasonably practicable, enforcing authorities considering protective measures taken by 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.
- 15 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.
- 16 Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences.

Targeting

- 17 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 dutyholders who are responsible for the risk and who are best placed to control it – whether employers, manufacturers, suppliers, or others.
- 18 The Council has systems for deciding which inspections, investigations or other regulatory contacts should take priority according to 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 entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place. Certain very high hazard sites will receive regular inspections so that enforcing authorities can give public assurance that such risks are properly controlled.
- 19 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.
- 20 When inspectors issue improvement or prohibition notices; issue simple cautions; or prosecute; enforcing authorities should ensure that a senior officer of the dutyholder concerned, at board level, is also notified.

Consistency

- 21 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- 22 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.

- 23 The Council recognises that in practice consistency is not a simple matter. 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. Decisions on enforcement action are discretionary, involving judgement by the enforcer. The Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

Transparency

- 24 Transparency means helping dutyholders to understand what is expected of them and what they should expect from the enforcing authorities. It also means making clear to dutyholders 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.
- 25 Transparency also involves the Council in having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements must have regard to legal constraints and requirements.
- 26 This statement sets out the general policy framework within which enforcing authorities should operate. Dutyholders, employees, their representatives and others also need to know what to expect when an inspector calls and what rights of complaint are open to them. Inspectors are required to issue 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 that enforcing authorities must have 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 will explain about the right of appeal to an Employment Tribunal in the case of statutory notices.
- 29 The Council has its own complaints procedure available on the website: www.kingston.gov.uk

Investigation

- 30 As with prosecution, the Council will use discretion in deciding whether incidents, cases of ill health, or complaints should be investigated. Indicative targets related to levels of investigation by HSE are normally specified in HSE's Business Plan, which is approved by the Government.
- 31 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.
- 32 To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. HSE's Business Plan 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.
- 33 Inspectors should 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.
- 34 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 enforcing authorities should 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;
 - the enforcement priorities;
 - the practicality of achieving results;
 - the wider relevance of the event, including serious public concern.

Prosecution

- 35 The decision to proceed with a court case rests with the investigating inspectors who use discretion in deciding whether to bring a prosecution.
- 36 The decision whether to prosecute should 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. No prosecution may 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.
- 37 While the primary purpose of the enforcing authorities 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 that prosecution should go ahead. The Code for Crown Prosecutors requires the decision to prosecute to 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, enforcing authorities may prosecute without prior warning or recourse to alternative sanctions.
- 38 Subject to the above, the Council will, in the public interest, normally prosecute, or recommend prosecution, 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 or safety case;
 - 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.
- 39 Where inspectors are assaulted or abused, enforcing authorities will seek police assistance, with a view to seeking the prosecution of offenders.

* 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 considers that normally such cases should be brought 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.

40 In the public interest, the Council will consider prosecution, or consider recommending 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.

Prosecution of individuals

41 Subject to the above, enforcing authorities should identify and prosecute or recommend prosecution of individuals if they consider that a prosecution is warranted. In particular, they should consider the management chain and the role played by individual directors and managers, and should take action against them 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, enforcing authorities should seek disqualification of directors under the Company Directors Disqualification Act 1986.

Publicity

42 The Council will consider making 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. The Council has arrangements for making publicly available information on these convictions and on improvement and prohibition notices which they have issued.

43 The Council will consider 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. They should 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.

Representations to the courts

- 44 In cases of sufficient seriousness, and when given the opportunity, the Council shall 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, enforcing authorities should 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

- 45 Where there has been a breach of the law leading to a work-related death, enforcing authorities need to consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter.
- 46 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.
- 47 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 are responsible for investigating possible health and safety offences. If in the course of a health and safety investigation, the Inspector finds evidence suggesting manslaughter or corporate manslaughter, they should pass it on to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, the Council may bring a health and safety prosecution in accordance with this policy.

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 website www.hse.gov.uk and in these free leaflets:

What to expect when a health and safety inspector calls: A brief guide for businesses, employees and their representatives Leaflet HSC14 HSE Books 1998 (single copy free) Web version available at www.hse.gov.uk/pubns/hsc14.pdf

Work-related deaths: A protocol for liaison Booklet MISC491 HSE Books 2003
www.hse.gov.uk/pubns/misc491.pdf

Work-related deaths: A protocol for liaison among the Crown Office and Procurator Fiscal Service, the Health and Safety Executive, the Association of Chief Police Officers (Scotland) and British Transport Police 2006

Local authorities may produce their own further information on enforcing health and safety. You can find your local authority's address and telephone number in your local telephone directory.

HSE priced and free publications are available by mail order from HSE Books, PO Box 1999, Sudbury, Suffolk CO10 2WA Tel: 01787 881165 Fax: 01787 313995 Website: www.hsebooks.co.uk (HSE priced publications are also available from bookshops and free leaflets can be downloaded from HSE's website: www.hse.gov.uk.)

For information about health and safety ring HSE's Infoline Tel: 0845 345 0055 Fax: 0845 408 9566 Textphone: 0845 408 9577 e-mail: hse.infoline@natbrit.com or write to HSE Information Services, Caerphilly Business Park, Caerphilly CF83 3GG.

This leaflet is available at www.hse.gov.uk/pubns/hse41.pdf

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