

## GENERAL PURPOSES AND LICENSING COMMITTEE – 11 JUNE 2010

### HEALTH AND SAFETY INTERVENTION PLAN FOR 2010/2011 AND REVIEW OF THE HEALTH AND SAFETY ENFORCEMENT POLICY

#### 1. INTRODUCTION

- 1.1 This report seeks approval of the Health and Safety Intervention Plan for 2010/2011 and renewal of the Health and Safety Enforcement Policy for the New Forest District Council.

#### 2. HEALTH AND SAFETY INTERVENTION PLAN FOR 2010/2011

- 2.1 The Health and Safety at Work Act 1974 requires all local authorities to perform their duties as enforcing authorities in accordance with mandatory Section 18 guidance which sets out the arrangements we should make in relation to health and safety. As part of this requirement the Health and Safety Intervention Plan for 2010/2011 (attached as Appendix 1) is presented to the Committee for Member approval. The plan proposes a full range of work for the current year and additionally reviews the work of the Service during the previous year.

#### 3. HEALTH AND SAFETY ENFORCEMENT POLICY

- 3.1 The Section 18 guidance also requires enforcement authorities to have an enforcement policy that follows the HSE Enforcement Policy Statement and ensure it is formally endorsed by the Enforcing Authority. The policy (attached as Appendix 2) has been produced in accordance with this requirement and sets out the general principles and approach which NFDC as a health and safety enforcing authority is expected to follow. The policy is presented to the Committee for Member approval.

#### 4. FINANCIAL IMPLICATIONS

- 4.1 The Health and Safety Intervention Plan for 2010/2011 contains proposed work for the current year and a review of work completed the previous year which is based on existing budgets. Therefore there are no financial implications as a result of this report.

#### 5. ENVIRONMENTAL AND CRIME & DISORDER IMPLICATIONS

- 5.1 There are no environmental or crime and disorder implications as a result of this report.

#### 6. EQUALITY AND DIVERSITY IMPLICATIONS

- 6.1 There are no equality and diversity implications as a result of this report

**7. RECOMMENDATION**

- # 7.1 That the Health and Safety Intervention Plan for 2010/2011 as set out in Appendix 1 be approved.
- # 7.2 That the Health and Safety Enforcement Policy as set out in Appendix 2 be approved

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**Background Papers**

The Section 18 Standard



**ENVIRONMENTAL HEALTH (COMMERCIAL)**

**HEALTH AND SAFETY INTERVENTION PLAN  
2010/2011**

## **1 INTRODUCTION**

### **1.1 New Forest District Council as a health and safety enforcing authority**

- 1.1.1 This Authority is designated as an enforcing authority under the Health and Safety at Work etc Act 1974, and as such has a statutory duty to enforce the appropriate legislation.
- 1.1.2 It is recognised that working in partnership with the Health and Safety Executive (HSE) and other local authorities represents an important means of ensuring that risks in workplaces are managed effectively.
- 1.1.3 Our working priorities as detailed in this intervention plan are shaped by HSE strategy; this identifies types of work that are known to present greatest risk. We deliver these priorities through work which focuses on local needs, as well as regional and national plans.
- 1.1.4 This intervention plan thus examines:
  - a) The aim and objectives of the health and safety service;
  - b) The planned work programmes; and,
  - c) A review of the work undertaken in the previous year.

### **1.2 Decision Making**

- 1.2.1 Delivery of the health and safety enforcement function is provided by Environmental Health (Commercial) which forms part of the Public Health and Community Safety Service. This report is consequently brought before the General Purposes and Licensing Committee for Member approval.

## **2 SERVICE AIMS AND OBJECTIVES**

### **2.1 The Aim**

- 2.1.1 The aim of the Service is to protect the health, safety and welfare of people, including employees and members of the public, who may be exposed to risks from work activities within the area of New Forest District Council. This will be achieved through securing improvements to working environments and by promoting the health of the population.

### **2.2 The Objectives – Key Delivery Priorities**

- 2.2.1 To manage the risk in high risk, poor performing businesses. This is a targeted approach to risk in line with the Better Regulation agenda;
- 2.2.2 To carry out a range of risk based interventions;
- 2.2.3 To investigate major injury incidents and fatalities, and complaints which meet the investigation criteria;

- 2.2.4 To work in partnership with local, regional and national bodies when it is relevant to do so;
- 2.2.5 To support the Council's corporate plan 'Leading our Forest Communities' which link to local priorities;
- 2.2.6 To promote the principle of 'sensible risk management' by subscribing to the principles of the HSE strategy document 'Health and Safety of Great Britain – Be Part of the Solution'.
- 2.2.7 To undertake regional and national priority work, where appropriate following the principles of the former Fit3 programme;
- 2.2.8 To ensure enforcement decisions are consistent with our Enforcement Policy, the Health and Safety Commission's Enforcement Policy Statement, and the Enforcement Management Model, and;
- 2.2.9 To train and develop our staff to ensure competence.

### **2.3 Contribution of Health and Safety to the Council's Corporate Plan**

- 2.3.1 The Council's Corporate Plan, Leading our Forest Communities, sets out how the Council will continue to engage with the people of the area to shape the future of the New Forest District.
- 2.3.2 Our work links with key aspects of the vision of the corporate plan; by maintaining healthy and safe communities, helping maintain a local economy through guidance and assistance offered to businesses, and by ensuring it is a safe and enjoyable environment for residents and visitors.

## **3 STAFF RESOURCES**

### **3.1 Staffing**

- 3.1.1 The current profile of staff within Environmental Health (Commercial) is as follows:

|     |     |                                     |
|-----|-----|-------------------------------------|
| 1   |     | Environmental Health Manager        |
| 1   |     | Senior Environmental Health Officer |
| 5   |     | Environmental Health Officers       |
| 4.5 | FTE | Environmental Health Technicians    |
| 2.6 | FTE | Administrative Support              |

- 3.1.2 It should be noted that these staff undertake a full range of duties, including non health and safety work. The Section 18 Standard which sets out the arrangements we should make in relation to health and safety requires that enforcing authorities have sufficient capacity to carry out their intervention plan. The work of each member of staff has been assessed and an allocation of time set aside for Health and Safety enforcement.

## 3.2 Staff undertaking health and safety work

3.2.1 For the year 2010 – 2011, we have calculated the available capacity for health and safety work after considering the full range of duties officers undertake, and constraints due to short-term contracts and long-term illness as follows:

| Staff                  | Full Time Equivalent |
|------------------------|----------------------|
| 1 Manager              | 0.3 FTE              |
| Officers               | 3.56 FTE             |
| Administrative Support | 0.65 FTE             |
| <b>Total</b>           | <b>4.51 FTE</b>      |

3.2.2 This figure of 4.51 FTEs represents a reduction from the 2009/2010 figure of 5.18 FTEs. This is equivalent to 147 worked days, where 1 FTE equals 220 working days.

## 4 PLANNED WORK FOR 2010 – 2011

### 4.1 How Work is Targeted

- 4.1.1 In accordance with the requirements of the HSE Strategy document 'Health and Safety of Great Britain – Be Part of the Solution', we have applied the following principles to determine appropriate targeted interventions:
- to maximise the impact of interventions in improving health and safety outcomes;
  - to secure action by duty holders to manage and control the health and safety risks of their work activities;
  - to focus our work on duty holders who are best placed to control the risks whether they be employers or others;
  - to engage with other organisations and stakeholders that can influence risk reduction;
  - to direct our attention to activities that give rise to serious risks or situations where hazards are least well controlled;
  - to stop those that seek economic advantage from non-compliance (e.g. rogue traders);
  - to follow national guidance on interventions and priority programmes; and,
  - to work in accordance with local, regional and national programmes.

### 4.2 Introduction to the Work Plan

4.2.1 This section details the work we propose to undertake in the forthcoming year. The work is separated into three tables, each of which gives an indication of the resources which will be required to complete them.

4.2.2 Maintaining and improving the standards of health and safety in the District is based upon two key aspects of work, proactive and reactive:

- Proactive: the inspection of high risk premises and poorly performing businesses, together with a range of local, regional and national projects which typically focus upon a particular business type, or identified hazard.
- Reactive: we undertake a range of reactive works including accident and incident investigation, service requests and responding to complaints.

### 4.3 Inspections, investigations, education and advice

4.3.1 Table 1 shows the resources required to undertake high risk inspections, accident investigations and other related work. The level of reactive work is assumed to remain similar in the forthcoming year to the 2009/2010 year.

| Title/Description of work   | Resources required   | Output / Outcomes   |
|---|--|---|
| <b>New Business Inspection</b> and risk rating.   | 250 new businesses, equivalent to 80 days.   | New Premises Assessed, rated and included in inspection programme or intervention strategies.                                   |
| <b>High Risk inspection</b> and risk rating – i.e. A, B1 as defined by LAC 67/2.  | 65 high risk premises inspection for year – equivalent to 100 days.                                | Greater awareness of H&S risks;<br>Reduction in RIDDOR Reports.   |
| <b>Targeting Poor Performing Businesses</b> – revisits and appropriate enforcement action.  | Estimated 40 premises, equivalent to 80 days.  | Achieving at least a minimum level of legal compliance.   |
| <b>Accident / Incident Investigation:</b> investigation of relevant notifications.  | 164 notified accidents and incidents – estimated 100 investigated in full, equivalent to 125 days. | Duty holders called to account for health and safety offences;<br>Improved management resulting in reduction in RIDDOR reports. |
| <b>General Service Requests:</b> Provision of advice to businesses and the public, and internal planning and licensing consultations. | 280 cases, equivalent to 700 hours (95 days).  | Improved knowledge by dutyholders of health and safety matters;<br>Appropriate intervention where necessary.                    |
| <b>Investigation of complaints.</b>   | 100 cases, estimated time equivalent to 100 days.  | improved health and safety compliance of businesses;<br>positive outcome for complainant.                                       |
| <b>Enforcement Action:</b> Contingency for enforcement action such as prosecution.  | Contingency of 40 days.  | Successful enforcement action.  |
| <b>Promotional work:</b> provision of advice to lower risk businesses   | Estimated 290 premises, equivalent to 250  | Improving health and safety awareness at lower risk business not  |

|  |   |   |
|--|---|---|
|  | hours or 34 days.   | otherwise subject to inspection.                |
| Training Course Provision - Preparing for and holding 2 health and safety courses                                | Estimated 4 days  |   |
| Staff Training to ensure competence and confidence and to ensure compliance with Section 18 competency standard. | Contingency of 10 CPD hours per officer, and 10 hours assessment and training - equivalent to 240 hours (32 days) | Maintaining competency of enforcement officers. |
| <b>Total</b>   | <b>690 days (3.1 FTEs)</b>  |   |

Table 1.

#### 4.4 Local Projects

4.4.1 Table 2 shows the resources required to undertake locally relevant project work specific to the needs of local businesses, employees, and other persons affected.

| Title/Description of work   | Resources required  | Output / Outcomes  |
|---|---|--|
| Caravan and Camping Sites (continuation of 2009 project)  | 12 holiday sites and 21 residential sites; equivalent to 33 days.                               | <ul style="list-style-type: none"> <li>• Increased industry awareness of risks</li> <li>• Improved knowledge of the Regulations;</li> </ul>  |
| Pub Playgrounds (continuation of 2009 project)  | Estimated 20 premises remaining to visit: equivalent to 20 days.                                | <ul style="list-style-type: none"> <li>• User safety</li> <li>• Business compliance</li> <li>• Updating risk rating for inspection programme</li> </ul>  |
| Garden Centres  | About 15 premises identified; estimated time including setup preparation, and training 30 days. | <ul style="list-style-type: none"> <li>• Business compliance</li> <li>• Updating risk rating for inspection programme</li> </ul>   |
| Day Nurseries – investigate knowledge and compliance within this sector, with the intention of providing relevant guidance. | Initial investigation – 4 days; contingency of 18 days  | <ul style="list-style-type: none"> <li>• Improved business awareness and response to infectious disease through partnership work with The Health Protection Agency.</li> </ul>   |
| Pub Cellar safety – inspection of cellars as part of food hygiene inspection and preparation of follow-up information sheet | Total 134 premises, equates to 28 days work (210 hours).  | <ul style="list-style-type: none"> <li>• Education of duty holders in the requirements of health and safety law in relation to cellars;</li> <li>• Enforcement where deemed necessary;</li> <li>• Development of an information sheet, and</li> <li>• Improving officer</li> </ul> |



|  |  |   |
|--|--|---|
|  |  | experience, knowledge and competence in this work area.   |
| Legionella – follow up to care home project, reviewing and revisiting premises to assess and ensure compliance with requirements.  | Estimated 15 premises, equivalent to 20 days work.   | <ul style="list-style-type: none"> <li>• Education of duty holders in the requirements of health and safety law in relation to Legionella control</li> <li>• Enforcement where deemed necessary.</li> </ul> |
| Flooring in Catering Establishments – continuation of previous 'Fit3' project, looking at slip/trip risks in flooring during routine food hygiene inspections and providing resources. | Assume intervention in half of all 780 food hygiene inspections planned for the year, equates to approx 35 days. | <ul style="list-style-type: none"> <li>• Provision of resources to businesses (leafets, posters etc)</li> <li>• Education of duty holders.</li> </ul>   |
| Swimming Pools (follow-up to 2009 project) visits, sampling and possible re-visits to 9 premises.  | Approximately 9 days.  | <ul style="list-style-type: none"> <li>• Improvement in quality of water in previously poor performing premises</li> </ul>  |
| Noise at Work in the entertainment industry – continuation of ongoing project: includes a combination of noise assessments, monitoring and provision of information.                   | Contingency of 20 days.  | <ul style="list-style-type: none"> <li>• Education and seeking compliance with standards contained within new noise regulations</li> </ul>  |
| Cold Working Temperatures – combination of mailshot, visits and provision of information via NFDC website to educate businesses.   | Approx. 60 hours (8 days)  | <ul style="list-style-type: none"> <li>• Increased awareness of the issue of cold working temperatures and proactive management of the issue.</li> </ul>  |
| Use of slip assessment tool to assess grip of flooring – focused upon takeaways sector.  | 15 – 20 premises, approx 80 hours (11 days)  | <ul style="list-style-type: none"> <li>• Increased awareness of the issue of slips and the effect of different floor types.</li> </ul>  |
| Total  | 232days (1.1 FTEs)   |   |

Table 2.

4.4.2 Enhanced officer competency is a valued output in relation to all the local projects. This is achieved through a combination of peer training, research and experience.

4.4.3 We will aim to share the results of assessments including best practice with businesses, which it is hoped will lead to improved compliance within the local business community, through a better understanding of specific hazards and practical solutions.

## 4.5 National and Regional Priorities

4.5.1 Table 3 shows work which is either being undertaken across Hampshire, and coordinated via the Hampshire and Isle of Wight Health and Safety Advisory Group, or nationally.

| Title/Description of work   | Resources required   | Output / Outcomes  |
|---|--|--|
| Ladder Amnesty – provision of information in relation to a national ‘amnesty’ where old/defective ladders can be exchanged for discounted new ladders, discounts on ladder hire and other information. Project will also involve assessment of ladders during routine health and safety and food inspections. | Anticipated 20 days (NFDC leading this project).                     | <ul style="list-style-type: none"> <li>• Removal of defective ladders from use.</li> <li>• Increased understanding amongst duty holders in relation to working at height.</li> </ul> |
| Asbestos: duty to manage project – a combination of mailshots, site visits, and provision of other information with possible cross boundary flexible warranted work.  | Anticipated 25 days, with possibility of work outside NFDC District. | <ul style="list-style-type: none"> <li>• Increased understanding of the issues in relation to asbestos.</li> <li>• Provision of relevant information</li> </ul>                      |
| LPG Project – premises with unknown/suspect LPG installation notified by HSE, subject to inspection and appropriate defined action  | Unknown, but contingency for 25 days                                 | <ul style="list-style-type: none"> <li>• Increased dutyholder knowledge of health and safety in relation to LPG</li> <li>• Partnership working between HSE/LA</li> </ul>             |
| <b>Total</b>  | <b>70 days (0.32 FTE)</b>  |  |

Table 3.

## 4.6 Summary of Resources Required and available

4.6.1 The preceding tables discussed in detail the proposed work plan for the forthcoming year. To summarise this work, the total resources required for the work areas we intend to do are as follows:

|   |             |
|---|-------------|
| Proposed Work                                     | Time (FTEs) |
| Inspections, investigations, education and advice | 3.10        |
| Local Projects                                    | 1.10        |
| National and Regional Priorities                  | 0.32        |
| <b>Total work</b>                                 | <b>4.52</b> |
| Staff Resources                                   | Time (FTEs) |
| <b>Total Resources</b>                            | <b>4.51</b> |

Table 4.

- 4.6.2 An assessment of the resources required and available officer time as detailed in the above table demonstrates that the service has sufficient capacity to undertake the planned work, taking into account areas where a contingency has had to be used.

## 5 SUMMARY OF PERFORMANCE 2009/2010

### 5.1 Comparison between planned interventions and actual performance 2009/2010

- 5.1.1 The 2009/2010 intervention plan sought to deliver the service by using the full time equivalent of 4.35 officers (5.18 including administrative support) in a combination of planned and reactive work.

| Planned work   | Actual performance  |
|--|---|
| Inspection and rating of new businesses                                      | 270 new premises were recorded as opening in the period and were subject to inspection or intervention questionnaire based on risk.                         |
| Advice and support to all businesses   | The Service provided health and safety training, the Councils website was reviewed and updated and we responded to 92 advisory service requests.            |
| High Risk Premises Inspections   | All high risk inspections were completed in period.   |
| Targeting Poor Performing Businesses   | A total of 70 revisits to premises were undertaken to establish at least a minimum legal standard.  |
| Accident/ Incident investigations  | All appropriate notifications were investigated; 98% of first responses were within target.   |
| Complaints and Service Requests  | 285 complaints and other service requests were investigated.  |
| Caravan Sites Inspection (focus on the 10 largest caravan sites in District) | This work area was researched and inspection resources prepared. 5 sites received detailed inspection. This work took more time than initially anticipated. |
| Safety in Swimming Pools Hotels  | 48 pools were inspected, several were revisited where problems were identified, and 3 were voluntarily closed until remedial measures were put in place.    |
| Survey of cleaning companies   | All relevant businesses were identified and inspected, and non-compliances identified and addressed.  |
| Safety in Play Areas in Hotels and Public Houses                             | Inspection materials and dutyholder resources were prepared and 10 premises received an inspection. Due to issues identified, most also received a revisit. |
| Enforcement  | Preparation of a formal prosecution discussed in section 5.4 took a total staff resource of 280 hours (38 days).  |

|   |   |
|---|---|
| Review of training courses  | A full day foundation health and safety course was held during the year. All candidates passed the course.  |
| To develop health and Safety awareness for school leavers about to enter workforce or work experience | A presentation was prepared and reviewed and in consultation with a local school, arrangements have been made to present it as the curriculum allows.                                   |
| Mailshot to premises with UV Tanning Equipment with new guidance                                      | 11 premises in the District were contacted by letter and through visits a further 2 premises were identified as having sun beds. Information and guidance was provided.                 |
| Industrial Estate Survey  | Industrial estates were visited during the year; any new businesses identified were added to the Acolaid premises database and action taken as per new premises.                        |
| Events - Acting as consultant to licensing applications and inspecting events                         | All notified events were reviewed and action taken as necessary. This included provision of advice, site visits, and where appropriate attending safety advisory group meetings.        |
| Care Home Project follow-up guidance  | Assessment of premises visited during the initial project phase was made, and Legionella was identified as an area for further guidance and enforcement action as necessary.            |
| Disease Reduction Programme (Legionella)  | The cooling tower register was reviewed and updated on the Council website.   |
| Injury Reduction Programme (noise at work, slips and trips)   | Considerable work was undertaken in relation to noise in the entertainment sector in premises known to have live entertainment, involving evening noise assessments, and site meetings. |
| Joint working (marina inspection, promotion)  | All relevant boat repair/marinas in the District were inspected and appropriate enforcement action taken.   |

Table 5.

## 5.2 Service Requests

5.2.1 The following list details the number of health and safety service requests received by category during the year 2009/2010.

- 164 reportable accidents (decision whether to investigate follows management review);
- 185 internal consultations from licensing and planning;
- 100 health and safety complaints, and;
- 92 requests for advice.

### **5.3 Section 18 Standard**

- 5.3.1 In 2008 the Health and Safety Commission issued new legally binding mandatory guidance called the 'The Section 18 Standard'. The intention of the Section 18 standard is to ensure that all enforcing authorities are equipped to make adequate arrangements for enforcement.
- 5.3.2 Considerable work has been undertaken to ensure that the Service is fully compliant with the standard by 31<sup>st</sup> March 2011; this has included:
- Preparation of report to management team to demonstrate commitment;
  - Updating enforcement policy statement;
  - Ongoing officer competence assessment

### **5.4 Successful Prosecution**

- 5.4.1 The Department successfully took a prosecution against a national catering company after inadequate health and safety procedures resulted in an accident to a 16 year old employee. Serious scalding injuries to the face, chest and arms were received when the employee was handling a soup kettle containing hot liquid. Although this case was very time consuming for the Service, it was considered to be a serious offence, and in the public interest to investigate. Magistrates awarded £5,000 for each of five offences, less a third discount for pleading guilty, £12,000 costs and £5,000 compensation to the injured employee.

### **5.5 Priority Planning**

- 5.5.1 New mandatory guidance on the priority planning of health and safety inspections had to be applied on 1<sup>st</sup> April 2010. A considerable amount of preparatory work was undertaken during the year to adopt this new guidance LAC67/2 on time. This work included:
- Updating the Acolaid computer database in relation to approximately 3000 premises;
  - Development of a new procedure for interventions in low risk businesses, and;
  - Training of inspectors in the application of the new inspection criteria.
- 5.5.2 This new scheme rates the performance of a business against a simplified rating system, based upon confidence in management, health performance, safety performance and welfare standards. This is in line with better regulation principles as it clearly identifies those businesses which are high, medium and low risk.

### **5.6 Promotion**

- 5.6.1 The Service developed a health and safety handbook which offers general advice and is freely distributed to businesses and is available to employees on request.
- 5.6.2 The Service maintains pages on the NFDC website as a source of advice.

## **5.7 Partnership Working**

- 5.7.1 The Service is represented on the Hampshire and Isle of Wight Health and Safety Advisory Group (Comprised of all Hampshire Local Authorities) which seeks to ensure consistent enforcement of health and safety in the County.
- 5.7.2 We have strong links with HSE inspectors who work in the region, and who were jointly warranted with NFDC inspectors to undertake work in both areas of responsibility.
- 5.6.3 Liaison between NFDC and the HSE concerning the activities and inspection history of local premises and national businesses.
- 5.6.4 Availability of resources in the HSE was drawn upon to investigate noise levels at work with noise meters on loan from the HSE.
- 5.6.5 Seminars and training is provided on current topics by the HSE at no cost to the Service.
- 5.6.6 A NFDC inspector represents the Hampshire and Isle of Wight Health and Safety Advisory Group on The South East Region Partnership Forum and provides a link between the HSE and Hampshire local authorities.
- 5.6.7 Printed materials are obtained from the HSE which are distributed to local businesses to support advice and compliance.

## **5.8 Performance Indicator**

- 5.8.1 The performance indicator for the year 2009/2010 sought to identify businesses with an improved confidence in management score. In practice, this was not found to be a useful measure, as there is necessarily a 'lag' between a business' health and safety compliance improving, and the confidence in management improving and this will not necessarily take place within a single financial year.
- 5.8.2 For all businesses, we undertake whatever action is appropriate to secure compliance, but this will not necessarily result in a re-inspection which would be required to assess this performance indicator. In addition such a visit may be seen as an additional burden, both on the business and the Service.
- 5.8.3 We undertook to improve the overall confidence in management score in 20% of businesses re-inspected. During the year improvement was noted in 25% of businesses.
- 5.8.4 It was previously proposed that this indicator be extended to the current year, but for reasons discussed above it is considered appropriate to report on the number of high risk inspections undertaken against the new priority planning guidance.

## **5.9 Primary Authority Partnership Scheme**

- 5.9.1 This authority recognises businesses that are part of the Primary Authority Partnership Scheme and undertakes to consult with the relevant primary authority prior to deciding on appropriate enforcement action.

## **5.10 Business Surveys**

- 5.10.1 The service regularly surveys the satisfaction of businesses in relation to our health and safety work. This forms part of the national indicator NI182. The result for the year 2009/2010 was good with an overall result of 86%.

## **6 CONCLUSION**

- 6.1.1 The workplan for the year 2010/2011 has been designed to be wide reaching and relevant for the businesses in the New Forest District. It is based upon a combination of inspection of high risk or poor performing businesses and a range of projects which focus upon either a particular risk or particular business sector. In addition, we will continue to undertake reactive work, responding to complaints and queries and investigating accidents.
- 6.1.2 The plan has been shown to be realistic and achievable with the current staff resources; any changes that occur in relation to these resources will necessitate a review of targets.
- 6.1.3 Last year the Service used a range of interventions to promote and regulate Health and Safety compliance. A full review of the work undertaken showed that it was carried out in accordance with last years plan, and was largely a success. Results have been used to shape this year's work plan.



*Environmental Health (Commercial)*

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



## Introduction

1. The Council believes in firm but fair enforcement of Health and Safety law in line with Health and Safety Executive's Enforcement Policy Statement (EPS). 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.
2. 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.
3. 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 holder's information and advice. Where appropriate our Inspectors may also serve Improvement and Prohibition Notices and prosecute.
4. 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 Council's Head of Legal Services finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.
5. Where circumstances warrant it and the evidence to support a case is available we will prosecute without prior warning or recourse to alternative sanctions.
6. 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 Guidance (including the EPS).
7. The Health and Safety Executive's priorities are used to target our activities and resources via our Health and Safety Intervention 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.

## The Purpose of Enforcement

8. The purpose of enforcement is to:
  - Ensure that duty holders take action to deal immediately with serious risks;
  - Promote and achieve sustained compliance;
  - Ensure that duty holders 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.

## **The Process of Enforcement**

9. Inspectors use various enforcement techniques to deal with risks and secure compliance with the law, ranging from the provision of advice to enforcement notices.
10. Enforcement decisions must be impartial, justified and procedurally correct. The Health and Safety Executive's Enforcement Policy Statement (EPS) sets out the approach we follow.
11. The Enforcement Management Model (EMM) 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 judgment and reflects the process by which enforcement decisions are reached.

## **The Purpose of the EMM**

12. 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.
13. 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.
14. 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**

15. The Council has a range of tools to seek compliance with the law and to ensure a proportionate response to criminal offences. Where appropriate we may:
  - Serve Improvement and Prohibition Notices
  - Prosecute
  - Issue Simple Cautions.

## **Complaints Procedure**

16. Complaints are dealt with by the Council's complaints procedure.

## **The Procedures and Principles of Enforcement**

17. When the Council makes decisions about enforcement it will apply the following 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.

### ***Proportionality***

18. 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.
19. Some Health and Safety duties are specific and absolute. Others require action as far as is reasonably practicable. We will apply the principle of proportionality in relation to both kinds of duty.
20. 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.
21. 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***

22. 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.
23. 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.
24. 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, the supplier of the equipment, the designer or client of the project. Where

several duty holders have responsibilities we will take action against those who are primarily in breach.

25. When our inspectors issue improvement prohibition notices, 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***

26. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
27. 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.
28. 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 Health and Safety Executive.

### ***Transparency***

29. 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.
30. 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.
31. 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 are required to issue "What to expect when a health and safety inspector calls" whenever they visit. This publication 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 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***

32. 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.
33. We have a corporate complaints procedure. Where a notice is served there is a right of appeal to an Employment Tribunal.

### **Investigation**

34. The Health and Safety Executive expects us to use discretion in deciding whether incidents, complaints or cases of ill health should be investigated.
35. 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, account of the following factors is taken:
- the severity and scale of potential or actual harm;
  - the seriousness of any potential breach of the law;
  - knowledge of the duty holder's past health and safety performance;
  - the enforcement priorities;
  - the practicality of achieving results;
  - the wider relevance of the event, including serious public concern.
36. 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 refer relevant information to other Regulators where there is a wider regulatory interest e.g. the HSE or to the Lead Authority of a duty holder within the Lead Authority Partnership Scheme.
37. We will carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so, for example because the police consider the cause to have been suicide.

### **Prosecution**

38. We will use discretion in deciding whether to initiate a prosecution, having 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 as well as the Councils own Corporate Enforcement Policy.
39. 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 circumstances warrant it and the evidence to support a case is available we will prosecute without prior warning or recourse to alternative sanctions.
40. Subject to our discretion, 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; or,
- false information has been wilfully supplied, or there has been an intent to deceive.

41. 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.

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

### ***Prosecution of Individuals***

43. 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**

44. We will make arrangements for making publicly available information on on improvement and prohibition notices which we have issued.

45. We will also consider drawing media attention to factual information about charges that have been laid before the courts, having due regard to publicity that could prejudice a fair trial, the Data Protection Act and Human Rights.

### **Death at Work**

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