

CONSIDERATION OF THE INTRODUCTION OF CHARGING BUSINESS FOR HEALTH AND SAFETY ADVICE FROM THE ENVIRONMENTAL HEALTH SERVICE

1. PURPOSE OF REPORT

- 1.1 The current 2015-2016 Health and Safety Intervention Plan states that advice to businesses is given free of charge. When the Committee were reviewing the current intervention plan in June 2015, consideration was given to whether health and safety advice should continue to be provided free of charge, or whether there was scope to charge for this service. At the request of the Committee, this subject is being given further consideration in this report.

2. THE HEALTH AND SAFETY REGULATORY SERVICE

- 2.1 The role of the regulator is to support, encourage, advise and where necessary, hold to account businesses to ensure that they effectively manage the occupational health and safety risks they create. This enables us to make best use of our resource by choosing the most appropriate way of influencing businesses to reduce risks to an acceptable level by targeting our interventions; which include advice, inspection, investigation and enforcement activity. Depending on the level of risk present and the cooperation of the employer, we choose the most appropriate response ranging from education through formal action to prosecution.
- 2.2 Advice is often seen as an important factor in giving responsible employers the knowledge to self-regulate. An employer may be unaware of duties until they are informed. Whilst larger businesses have support from head office, the majority of small businesses do not have the same resources and can be unaware of legal duties.
- 2.3 The Council's Health and Safety Enforcement Policy Statement states the need to target relevant and effective interventions that focus on influencing behaviours and improving the management of risk. As well as taking formal action, many of our dealings are informal e.g. offering information and advice to employers.
- 2.4 Routine food hygiene work takes us into premises where we have contact with employers. In addition to providing advice and information in relation to food hygiene, where appropriate, health and safety advice is also given. Where a food business is new and we make the first inspection of food hygiene, we also give advice regarding matters of health and safety. This type of intervention often produces a positive response from the employer.
- 2.5 There are currently few occasions when we proactively receive a request for advice from an employer. This may be due to us being primarily a regulatory service. Should matters of non-compliance be noted, there is no provision for us to ignore them. Where we are invited into a business and identify non-compliance we would agree a suitable timescale of response to achieve compliance which will depend on the level of risk. However for more serious breaches of law, we would take appropriate formal action and this can be seen as conflicting with an employer's expectation of receiving advice.
- 2.6 Advice can also be given at the same time as investigating other matters that breach law. Health and safety requirements are numerous. A matter that may be deserving of

formal enforcement action will be treated separately from a less serious or technical matter. Therefore a letter reporting investigation findings can include both enforcement aspects and recommendations. In all communication we ensure there is clear differentiation between matters that are for information or guidance as distinct from legal requirements.

- 2.7 The provision and availability of advice is an integral part of the service to employers. It is passed on during all forms of contact with employers. This does make it difficult to determine when it starts and finishes and therefore to make it into a saleable service.

3. APPROACH OF HAMPSHIRE LOCAL AUTHORITIES

- 3.1 Although some other Local Authorities in Hampshire and the Isle of Wight have considered charging for advice, none have taken the step of introducing it.
- 3.2 This can be seen in the light of the National Local Authority Enforcement Code and Supplementary guidance which gives recognition to the role of local authorities being able to provide advice and support to business. It suggests this can support local economic development and growth and identifies the benefit to new business start ups. However, there is no mention that a charge should not be levied in these circumstances.

4. FEES LEVIED BY THE HEALTH AND SAFETY EXECUTIVE (HSE)

- 4.1 The HSE have not pursued charging for advice. HSE inspectors use the majority of their time investigating accidents, ill health and the most serious complaints. The organisation does not have the resource to provide staff able to give one-to-one advice. This gap has been filled by the HSE website which is now the source of advice. This website has developed into the most extensive and authoritative source of health and safety information available to all. It is freely available and accessible.
- 4.2 However, the HSE does charge businesses for the time spent by inspectors carrying out investigatory work. This Fee For Intervention (FFI) cost recovery scheme, came into effect on 1 October 2012, and was introduced by The Health and Safety (Fees) Regulations 2012. A business now has to pay a fee if an HSE inspector makes a visit to a business and they see material breaches of the law.
- 4.3 The suitability of this approach was considered for local authority enforcement work, and was rejected at a national level. This is currently not an available option for Local Authorities. The HSE website states that FFI only applies to work carried out by HSE's inspectors. It goes on to say "if your business is inspected for health and safety by another regulator, such as local authority environmental health officers, it will not apply".

5. CONCLUSIONS

- 5.1 This reported has sought to highlight the difficulties which would be encountered in charging businesses for the provision of health and safety advice. It would be difficult to determine when informal advice, for example a telephone discussion becomes chargeable. In addition it is difficult to determine when advice stops and becomes enforcement action. It is possible that better performing businesses which may currently seek advice will be discouraged from doing so.

- 5.2 The benefit from income generation realistically needs to be seen against the negative affect it would have on our relationship with business. The income likely to be generated is small due to the expected number of requests. The result is also likely to lead to the service not reaching as many businesses as it does at present.
- 5.3 The small number of enquiries currently received by the Service are welcomed as they give an opportunity for an employer to increase their understanding of responsibilities of staff and public safety. This is regarded as supporting business in complying with the law and is likely to produce a positive action from the employer. Additionally, it is considered that the Environmental Health Service can contribute to delivering the growth agenda by providing advice to new business.
- 5.4 There are no other Hampshire Authorities that make a charge for health and safety advice.

6. FINANCIAL IMPLICATIONS

- 6.1 The existing budget covers all work currently carried out by the service. This report considers the benefit of raising income by the introduction of charges for health and safety advice and considers the affect on the service to business. If introduced, the potential income is small due to there being little demand from employers actively seeking advice.

7. CRIME & DISORDER IMPLICATIONS, EQUALITY & DIVERSITY IMPLICATIONS AND ENVIRONMENTAL IMPLICATIONS

- 7.1 None.

8. RECOMMENDATIONS

- 8.1 It is recommended that the Committee do not introduce charging for health and safety advice at this time.
- 8.2 It is advised that the Service keep this matter under review with a view to presenting it to Committee in the future in light of new information or guidance.

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Background Papers:

The Health and Safety Enforcement Policy Statement - NDFC Website
National Local Authority Enforcement Code and Supplementary guidance - HSE Website