

Regulatory Services Partnership, (RSP) –Health and Safety Enforcement Policy

1.0 Purpose of Policy

- 1.1 The main aims of the health and safety service, are to protect the self-employed, employees, contractors, visitors and members of the public so far as is reasonably practicable from risks to their health safety and welfare arising out of work in the London Boroughs of Wandsworth, Merton and Richmond upon Thames. It is also to ensure that employers, the self-employed and employees meet their statutory obligations under the Health and Safety at Work etc Act 1974 within the London Boroughs of Wandsworth, Merton and Richmond upon Thames. This Policy will be compatible with the principles set out in the overarching RSP Enforcement Policy.
- 1.2 Local authorities are responsible for health and safety enforcement only in the work activities set out within the Health and Safety (Enforcing Authority) Regulations 1998. Other activities will be enforced by the Health and Safety Executive and partner Government bodies depending on the industry.

2.0 What we will do

- 2.1 The RSP will put into place adequate arrangements and procedures for enforcement by complying with the National Local Authority Enforcement Code – Health and Safety at Work issued under section 18(4)(b) of the Health & Safety at Work etc. Act 1974. This Council will also follow the guidance issued to local authorities by the Health and Safety Executive in its Enforcement Policy Statement and yearly updates.

3.0 Overview

- 3.1 This policy incorporates a joint statement of commitment (SoC), agreed by local authority (LA) representative bodies and the Health and Safety Executive (HSE) in March 2019, and sets out our shared vision for an ongoing LA/HSE co-regulatory partnership. Ensuring LAs and HSE work together as effective, modern and professional regulators - delivering the positive benefits of efficient, world leading workplace health and safety, to achieve:
 - Sustainable arrangements for the enforcement of work related health and safety.
 - Established joint working arrangements resulting in effective engagement, consultation and communication.
 - Consistency of high quality regulation across HSE and LA enforced businesses.
- 3.2 The Councils, through the relevant Directors and/or Chief Executives authorise officers to carry out the health and safety duties it has been decided they are trained and competent to do. A list of Authorised officers and their authorisations are held by the Food and Safety Managers.

Current legislation, approved codes of practice and technical guidance will be available for reference.

- 3.3. It is the RSP's policy to ensure its approach to enforcement is consistent with HSE Statement on Enforcement Policy and the RSP's overarching enforcement policy
- 3.4 This statement sets out the general principles and approach, which the Executive expects, enforcing authorities to follow. This Policy has been written having regard to the Regulator's Code (6 April 2014). Officers will therefore have regard to and implement the principles of proportionality, consistency, transparency and targeting.

4.0 Principles of Enforcement

- 4.1 The purpose of enforcement is to: -
- Ensure that duty holders take action to deal immediately with serious risks
 - Promote and achieve sustained compliance with the law
 - Ensure that duty holders 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
- 4.2 Investigations undertaken under criminal law are distinct from civil claims for compensation. Although enforcement action may not be appropriate that does not necessarily preclude civil claims being taken by the injured party.
- 4.3 Authorised officers/inspectors seek to secure compliance with the law and to ensure a proportionate response to criminal offences. Inspectors may offer duty holders advice and support, both face to face and in writing. This may include warning a duty holder that in the opinion of the inspector, they are failing to comply with the law. Where appropriate officers may also serve improvement and prohibition notices, issue simple cautions and they may prosecute. In determining appropriate enforcement action officers from the RSP will refer to the HSE's enforcement management model (EMM).
- 4.4 The appropriate use of enforcement powers 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 failure to safeguard health, safety and welfare. Authorised officers when judging compliance with the law take into account relevant case law, codes and guidance, use sensible judgement about the extent of the risks and the effort that has been applied to prevent them.
- 4.5 The RSP will ensure resources are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. Action will be focused on the duty holders who are responsible for the risk and who are best placed to control it – whether employers, manufacturers, suppliers or others.

5.0 Investigation of Incidents and Complaints (Reactive visits)

- 5.1 The RSP will use National Guidance and local priorities in deciding whether incidents, cases of ill health or complaints should be investigated. We investigate to determine:
- Causes
 - Whether action has been taken or needs to be taken to prevent 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 using the HSE Enforcement Management Model for serious breaches of legislation
- 5.2 To maintain a consistent and proportionate response, the RSP employ an incident selection criterion to act as guide when determine which RIDDOR notifiable incidents warrant investigation.
- 5.3 The incident investigation criteria selection form used by the council is based on HSE national priority areas and local knowledge as published in the latest version of the HSE's Local authority circular, (LAC) 67-2.

6.0 Inspections and proactive visits

- 6.1 Proactive inspections will focus on premises identified in the list of high risk activities/sectors contained within LAC 67-2 and premises identified through local intelligence as not managing their health and safety risks. Examples include Gas safety checks in Catering premises and inspections of premises providing high risk Massage and Special treatments.

7.0 Health & Safety Enforcement

- 7.1 An officer will consider the most appropriate course of action during routine inspections or following incidents/accidents or complaints. In line with the policy and having regard to the Enforcement Management Model (<http://www.hse.gov.uk/enforce/emm.pdf>) the officer will use their judgement on what action to take that is namely:
- No action
 - To give verbal and written warnings
 - Serve improvement or prohibition notices
 - Serve a simple caution
 - To prosecute
 - To seize an article or substance
 - Any combination of the above
- 7.2 An officer, when using their judgement, will have regard to legal requirements. The law can be 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 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 or industry guidance material describing good practice. The HSE also have web-based tools to help businesses comply with the law. Following this guidance is not compulsory, but doing so is normally enough to comply with the law.

7.3 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.

8.0 Verbal Advice and Letters

8.1 The circumstances when it is appropriate to use verbal advice and written warnings are: -

- The risk gap is minor
- The act or omission is not serious enough to warrant formal action
- From the individuals/ business compliance it can be reasonably expected that the warning will achieve compliance
- There is no deliberate economic advantage being sought
- Confidence in the management is high
- The consequence of non-compliance will not pose a significant risk to health and safety
- Even where some of the above criteria are not met, there may be circumstances in which a warning will be more effective than a formal approach

The officer will tell the duty holder what to do to comply with the law, explain why and distinguish legal requirements from best practice. Inspectors will, on request, confirm any advice or legal requirements in writing detailing the above. An officer will not specify a lower standard than that prescribed by legislation.

The officer will agree a timescale for compliance at the visit or will put a timescale for compliance in the letter.

9.0 Serving Notices

9.1 There are 2 types of Health and Safety Notice namely **Prohibition Notice** and **Improvement Notice**. The authorised officer will discuss, where possible, the reasons for the service of the Notice and try to agree timescales for work to be carried out in compliance with the Notice. In some situations it may be appropriate to serve both types of Notice on the duty holder.

9.2 Prohibition Notices (PN)

These are served where the situation is hazardous, there is large risk gap and the hazards poses *a risk of serious personal injury*. Examples may include unguarded machinery or release of carbon monoxide from an appliance used indoors. A PN can require immediate action or be deferred. The Notice will state which legislation has been breached and why the inspector is of that opinion; what needs to be done, why and by when.

The PN can be appealed to an employment tribunal within 21 days beginning with the date of service on the appellant. Details of the appeals will be provided at the time of the Notice being served. The PN is not suspended by an appeal and remains in force unless the tribunal finds in the favour of the appellant.

Failure to comply with a PN will generally result in prosecution.

9.3 Improvement Notices (IN)

Served when an authorised officer is of the opinion that there is a contravention of the law at the time of the visit or where there has been a contravention and it is likely that the contravention will continue or be repeated. An officer will consider:

- The risk gap assessment.
- The seriousness of the legal contravention.
- Whether the employer appears deliberately unwilling to recognise their responsibilities and those who may be affected by their actions.
- Whether the duty holder has a history of non-compliance with verbal and written warnings.
- Whether deliberate economic advantage has been sought.

The Notice will state which legislation has been breached and why the inspector is of that opinion; what needs to be done, why and by when. Timescales can be negotiated and will not be less than 21 days from the service of the IN.

Like PNs, INs can be appealed to an employment tribunal within 21 days of the date of service. Details of the appeals procedure will be provided at the time that the Notice is served. The IN is suspended until the appeal is heard or withdrawn.

Failure to comply with an IN will generally result prosecution.

10 0 **Prosecution**

While the primary purpose of the enforcing authorities is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution can be a component of enforcement. Enforcing authorities must use discretion in deciding whether to bring a prosecution. Where the circumstances warrant it and evidence to support a case is available, the local authority may prosecute without prior warning and recourse to alternative sanctions. The decision to prosecute should 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. Prosecutions will only be considered when there is sufficient evidence to provide a realistic prospect of conviction and that prosecution would be in the public interest. Subject to these two tests the Council will normally prosecute where one or more of the following apply: -

- Death was a result of a breach of the legislation.
- The alleged offence was extremely serious. This will take into account the seriousness of any actual or potential harm, and the general record and approach of the offender.
- 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.
- A duty holder'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
- Work has been carried out without or in serious non-compliance of an appropriate licence or safety case.
- 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.
- Inspectors have been intentionally obstructed in the lawful course of their duties.
- False information has been wilfully supplied, or there has been intent to deceive, in relation to a matter which gives rise to significant risk.

Furthermore, the Council will consider prosecution where, following an investigation or other regulatory contact, the following apply:

- The prosecution is 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

10.1 **Prosecution of a Duty Holder**

This can be of an individual, a company or company director. In the latter case this will be where the local authority can prove that the failing was a result of the consent, connivance or neglect of a director. Duty holders can be employees as well as employers.

Where appropriate, disqualification of directors will be sought under the Company Directors Disqualification Act 1986.

10.2 **Simple Caution**

A simple caution may be used in cases involving first time low-level offences where the public interest can be met by a caution. We will consider whether a caution is appropriate to the offence and the offender, and whether a caution is likely to be effective in the circumstances.

10.3 **Death at Work**

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. Our decisions on investigation and prosecution will follow the 'Work Related Deaths: A Protocol for Liaison' document. This protocol has been agreed between the Health and Safety Executive (HSE) the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS). It sets out the principles for effective liaison between the Agencies in relation to work related deaths. 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. They may involve the support of the Council and/or the HSE in the investigation. We are responsible for investigating possible health and safety offences. If in the course of our investigation, we find evidence to suggest manslaughter or corporate manslaughter it will be forwarded to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, we will normally bring a health and safety prosecution in accordance with this policy.

References

- Health & Safety Executive (HSE) Enforcement Policy Statement
- HSE Enforcement Management Model (EMM)
- HSE National Local Authority (LA) Enforcement Code
- HSE Section 18 Guidance
- Legislative and Regulatory Reform Act 2006
- Regulators Code 2013
- The Enforcement Concordat
- The Work Related Death Protocol
- Corporate Manslaughter of Health & Safety Offences Causing Death – Definitive Guidance February 2010