

Harlow Council

Environmental Health Services Health & Safety Enforcement Policy

Introduction

The Health and Safety at Work etc. Act 1974 provides the framework for protecting employees, the self employed and non employees from hazards arising out of work activities.

The Health and Safety Executive (HSE) and local authorities enforce occupational health and safety law. Premises and activities are allocated to these bodies by provisions contained in the Health and Safety (Enforcing Authority) Regulations 1998.

This document states our enforcement policy on the delivery of the health and safety service and the organisational arrangements in place to achieve them. It will be the duty of Harlow Council and its appointed Inspectors to act in accordance with the policy and procedures. The policy represents the correct approach to be taken when enforcing the Health and Safety at Work etc. Act 1974 and relevant statutory provisions.

The policy extends the principles contained within the General Enforcement Policy for Environmental Health which also apply.

Enforcement Policy Statement

Harlow District Council aims to:

- protect the health, safety and welfare of employees and to safeguard others, including the public, who may be exposed to risks from work activity in premises for which the authority has health and safety enforcement responsibility;
- to seek compliance with current health and safety legislation;
- to encourage employees and employers to incorporate the principles of health and safety management into all areas of their work;
- to ensure that adequate regard is had to the training and experience of officers in the allocation of enforcement duties. In particular inspection and enforcement work in relation to high risk, complex premises will be allocated only to staff who have gained relevant training and experience.

Approval

The Environment Committee of Harlow District Council approved this policy on 11th March 2003.

Access to the Policy

This policy is available on the Council's web site (www.harlow.gov.uk) and in hardcopy from the Environmental Health Services offices in the Town Hall. It can be ordered by telephoning (01279) 446111, emailing (env.health@harlow.gov.uk) or by writing to Environmental Health Services, Harlow District Council, Town Hall, Harlow, CM20 1HJ.

Harlow District Council believes in continuous improvement, and you are therefore invited to submit any comments or suggestions regarding this policy to the Head of Environmental Health Services as detailed above.

Principles of Enforcement

When enforcing health and safety law this authority shall have regard to the principles of **proportionality** in applying the law and securing compliance, **consistency** of approach, **targeting** of enforcement action and **transparency** about how the regulator operates and what those regulated may expect. These principles will apply both to enforcement and to the management of the Council's enforcement activities as a whole.

Proportionality

Proportionally 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 enforcing authorities to achieve compliance should be proportionate to any risks to health and safety and to the seriousness of any breach.

Some health and safety duties are specific and mandatory, others require action so far as practicable. In general, the concept of proportionality is built into the regulatory system through the principle of 'So Far As Is Reasonably Practicable'. Deciding what is reasonably practicable to control risks involves the exercise of judgement of duty holders and discretion by enforcers. When duty holders and enforcer cannot reach agreement, final determinations on what is reasonably practicable in particular circumstances are made by the courts.

When the law requires that risks should be controlled so far as is reasonably practicable, consideration should always be taken into account of the cost of protective measures in relation to the degree of risk. This authority may legitimately expect that relevant good practice will be followed. Where relevant good practice in particular cases 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. At the other extreme, some risks may be so minimal that it is not worth spending more to reduce them.

Consistency

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

Duty holders managing similar risks expect consistency from enforcing authorities in the advice tendered; the use of enforcement notices, decisions on whether to prosecute, etc.

In practice, consistency is not a simple matter: Health and safety inspectors are faced with many variables: the level of hazard, the attitude and competence of management, and the history of accidents may vary between companies that may otherwise appear similar. The decision on enforcement action is a matter of judgement and the enforcer must exercise discretion.

This authority will endeavour to adopt an approach that is consistent with other authorities when giving advice, using enforcement notices, making decisions on whether to prosecute and in responding to accidents.

Transparency

Transparency means helping duty holders to understand what is expected of them and what they should expect from enforcing authorities. 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.

Health and Safety Inspectors will operate within the framework of the above structure. Inspectors will make clear distinctions between legal requirements and advice about recommended good practice.

Duty holders need to know what to expect when an inspector calls. They will be provided with information about any action taken or which is required for keeping them informed about matters relevant to their health, safety and welfare. In the case of statutory notices, duty holders will be advised of their rights to appeal to an industrial tribunal.

Targeting

Targeting means making sure that inspection is 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, manufacturers, suppliers, or others.

Inspections will be carried out in those premises where the risks are perceived to be greatest and account will be taken of the hazard, nature and extent of risk. Allocation of inspections will be determined having regard to Health & Safety Executive guidance on inspection rating systems.

When formal action is necessary the person responsible for creating the risk should be held to account for it. Where there are several duty holders action will be taken against those who can be regarded as primarily in breach.

Enforcement Procedures

General Approach by Inspectors

The Council's appointed health and safety inspectors will be expected to apply the principles of good enforcement in their day-to-day tasks. When enforcing health and safety legislation, inspectors will:

- when giving advice, explain clearly what needs to be done, why, and by when. The advice must also be confirmed in writing on request, making sure that legal requirements are clearly distinguished from recommendations;
- provide, where appropriate, an opportunity to discuss the issues before formal action is taken, for example, before serving an Improvement Notice;
- explain in writing, where applicable, why any immediate action is considered necessary (rather than any other course of action);
- explain any rights of appeal when formal or immediate action is taken;
- where applicable consult formally appointed staff safety representatives during visits and ensure that they are adequately informed about matters affecting their health, safety and welfare.

Inspections / Visits

At the end of an inspection / visit, inspectors should discuss with the business what further action, if any, they are going to take. The leaflet '*What to expect when a health and safety inspector calls*' should be given to the business at the time of an inspection.

When making a decision on the appropriate course of enforcement action to achieve compliance such action should be proportionate to any risks to health and safety and to the seriousness of any breach.

Having considered all relevant information the enforcement options are:

- A. No action / Informal letter**
- B. Written Warning and Advice**
- C. Improvement Notices**
- D. Prohibition Notices**
- E. Formal Cautions**
- F. Prosecution.**

A. No Action / Informal letter

This will be appropriate when no problems are found, or recommendations on good practice are issued following an inspection.

B. Written Warning and Advice

The use of advisory or warning letters or other documentation is appropriate where:

- the act or omission is not judged to be an imminent risk;
- it can be reasonably expected that it will achieve compliance;
- confidence in the management is reasonable;
- the consequences of failure to comply will not pose an imminent risk to health and safety.

Correspondence to employers must:

- be sent promptly;
- contain enough information for the employer to understand what is required and why;
- indicate what regulations are contravened, any legal requirements and the measures required to achieve compliance;
- give a clear distinction between statutory requirements and guidance which is good practice but not compulsory;
- specify a time period during which remedial work should be completed;
- where applicable, be copied to the health and safety representative for the premises.

C. Improvement Notice

Circumstances that indicate the Improvement Notice procedure should be followed include:

- there are significant contraventions of legislation;
- there is a lack of confidence in the proprietor or enterprise to respond to an informal approach;
- there is a history of non-compliance with informal action;
- standards are generally poor with little management awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to health and safety;
- where it is intended to prosecute, and effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

Officers will only consider service of Notice where there is sufficient evidence to justify such action.

Before serving an Improvement Notice, inspectors will discuss with the business what the breaches of the law are, the action that will be needed to comply and the appropriate timescales for completion of the work.

D. Prohibition Notice

Prohibition notices are served where, in the opinion of the inspector, there is an imminent risk of serious personal injury. Where a prohibition notice is served it should be discussed, where practicable, with the business at the time, and the employers views taken into account. Where the notice is issued the Inspector should provide a written explanation of the reasons for the action.

Deferred prohibition notices can be used where the serious risk is not imminent and therefore, the notice does not need to take immediate effect. An inspector can withdraw a deferred prohibition notice at any time before the end of the period specified. The time period specified can be extended by an inspector at any time when an appeal against the notice is not pending.

In the case of their power to 'seize and make safe' (Section 25 Health and Safety at Work etc. Act 1974), Inspectors should send a written explanation in most cases within 5 working days, and in all cases within 10 working days.

E. Formal Caution

This course of action may be used for more serious breaches as a final warning. Formal cautions shall only be considered in cases where the evidential criteria for prosecution are satisfied and it is in the public interest to submit a formal caution rather than initiate prosecution proceedings.

A Formal Caution will only be used as an alternative to prosecution. The main aim of a Formal Caution is to deal with certain offenders by diverting them from the criminal courts and to enable a previous relevant offence to be cited in subsequent proceedings.

For a formal caution to be issued a number of criteria must be satisfied:

- sufficient evidence must be available to prove the case;
- the offender must admit the offence;
- the offender must agree to accept a formal caution;
- the offence or a similar one, must not have been committed by the offender before.

F. Prosecution

Discretion must be used in deciding whether to initiate a prosecution. Other approaches to enforcement can often promote health and safety more effectively but, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.

The decision to proceed with a court case rests with enforcing authorities.

Prosecution will be considered when:

- 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, e.g. especially where there would be a normal expectation that a prosecution would be taken or where through the conviction of offenders, others may be deterred from similar failures to comply with the law; or
- there is judged to have been potential for considerable harm arising from the breach; or
- the gravity of the offence, taken together with the general record and approach of the offender warrants it, e.g. apparent reckless disregard for standards, repeated breaches, persistent poor standards.

The decision to prosecute must also take account of the criteria set down in the Code for Crown Prosecutors (CPS) e.g. evidence and public interest tests. The Code is on the CPS website: www.cps.gov.uk or can be requested by telephoning 0207 796 8442.

Subject to the above, this Authority will identify and prosecute or recommend prosecution of individuals, including company directors and managers, if they consider that a conviction is warranted and can be secured.

Death at Work

Where there has been a breach of the law leading to a work-related death, this authority will consider whether the circumstances of the case might justify a charge of manslaughter. In such circumstances this authority will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) and if it finds evidence suggesting manslaughter, pass it on to the Police or where appropriate the CPS. If the Police or the CPS decide not to pursue a manslaughter case, the authority will prosecute a health and safety case if that is appropriate.

Encouraging Action by the Courts

Health and safety law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and in some cases imprisonment may be imposed by higher courts. The Health and Safety Commission continues to raise the courts' awareness of the gravity of health and safety offences and encourages them to make full use of their powers. Harlow Council as an enforcing authority will also draw the court's attention to *Howe and Son (Engineers) Ltd [1999] 2 All ER*, and subsequent judgements, which stated that: "a fine must be large enough to bring home to those who manage a company, and their share holders, the need for a safe environment for workers and the public".

Lead Authority Partnership Scheme

Where a company has a Lead Authority, inspectors shall discuss any shortcomings in participating companies agreed policies or procedures.

If the Council is considering formal enforcement action, i.e. notices or prosecution against an outlet of a participating company it should, unless there is need for immediate action, discuss the matter with the Lead Authority before taking action. Where immediate action has been necessary, the Lead Authority shall be informed as soon as is reasonably practicable.

Management Systems

The Council will maintain management systems to monitor the quality and nature of enforcement activity undertaken to ensure, as far as is practicable, uniformity and consistency in approach and a quality service in general.

In addition to internal monitoring systems, the Council will also participate from time to time in inter-authority audits in relation to its health & safety duties.

Departure from Policy

All authorised inspectors when making enforcement decisions shall abide by this policy, and refer to supporting documented operating procedures.

The Head of Environmental Health Services or a designated alternative inspector will only accept any departure from policy in exceptional circumstances capable of justification, and only after full consideration and authorisation.

Complaints about the Service

In relation to complaints about the Environmental Health Service, complainants will be encouraged to discuss the complaint with the inspector's line manager in the first instance. This is without prejudice to any formal appeals mechanism.

Harlow Council also operates a corporate Customer Care and Complaints Procedure, details of which are available on request, or on Harlowweb: www.harlow.gov.uk