



**Charnwood Borough Council**

# **Health and Safety Enforcement Policy**

Date of Issue: April 2011

# **HEALTH AND SAFETY ENFORCEMENT POLICY**

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## 1.0 GENERAL BACKGROUND

- 1.1 This Policy Statement is based on the Authority's aim to protect the health, safety and welfare of people at work, and to safeguard others, principally members of the public, who may be exposed to risks from the way that work is carried out on premises which are the Authority's enforcement responsibility.
- 1.2 The purpose of this document is to state the authority's general policy with respect to health and safety law enforcement; following the principles contained in the Cabinet Office's Enforcement Concordat, the Health and Safety Executive's Enforcement Policy Statement and other relevant guidance documents. This document should be read in conjunction with the Council's Corporate Enforcement Policy and Environment Health Enforcement Policy.
- 1.3 The Policy is based on the principles of openness (about our policies and practices), clear standards (our performance and levels of service), proportionality (to secure compliance), consistency (of our approach), targeting (of enforcement action), transparency (of our methods and organisation) and accountability (for our actions).
- 1.4 This Authority being a signatory to the Cabinet offices '*Enforcement Concordat*' will draw clear standards in relation to the level of service and performance the public, employers, employees and businesses can expect to receive. The standards will be made available (upon request) to employers, businesses and others who are regulated by the Authority.
- 1.5 This Authority will put into place the required arrangements and procedures to comply with Section 18 guidance issued by the Health and Safety Executive. This Authority will also follow the guidance issued to local authorities by the Executive in its Enforcement Policy Statement.
- 1.6 This Authority is committed to preventing accidents and ill health, in premises for which it is the enforcing authority, of employees, members of public and others who have cause to resort to the premises.
- 1.7 This Authority will only enforce health and safety within its field of responsibility, that is:
  - (a) activities/premises being within the Authorities geographical boundary which are so stipulated in the Health and Safety (Enforcing Authority) Regulations 1998 (as amended)
  - (b) activities/premises locally agreed with the Health and Safety Executive.
  - (c) Activities/premises which fall within the memorandum of understanding to the flexible warranting scheme.
- 1.8 The emphasis of enforcement will be primarily based upon health and safety risks, the attitude of employers/businesses/owners and/or the seriousness of any contravention of health and safety standards.

- 1.9 The authority will work with employers/businesses/proprietors to achieve legislative compliance, through inspection, education and the provision of advice and information as appropriate.
- 1.10 The policy will be fully documented and reviewed on a regular basis, at once every 5 years or sooner when there is a major change or development in health and safety legislation or guidance.
- 1.11 Any departure from the policy will be exceptional, capable of justification by the officer and should only be undertaken once their manager has been informed; unless there is a serious and imminent risk of accident or injury.
- 1.12 This authority is committed to providing ready access to those wishing to appeal or complain about any enforcement action.

## **2.0 PRINCIPLES OF ENFORCEMENT**

### **2.1 Proportionality**

- 2.1.1 Proportionality means relating enforcement actions 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.
- 2.1.2 Some health and safety duties are specific and absolute. Others require action so far as is reasonably practicable. We will apply the principle of proportionality in relation to both kinds of duty.
- 2.1.3 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.
- 2.1.4 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.

### **2.2 Targeting**

- 2.2.1 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.

- 2.2.2 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.
- 2.2.3 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 or the supplier of the equipment. Where several duty holders have responsibilities we will take action against those who are primarily in breach.
- 2.2.4 When our inspectors issue improvement or prohibition notices or in exceptional circumstances issue formal cautions or prosecute, we will ensure that a senior officer at the duty holders head office is also notified.
- 2.3 Consistency
  - 2.3.1 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
  - 2.3.2 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.
  - 2.3.3 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.
- 2.4 Transparency
  - 2.4.1 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.
  - 2.4.2 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.
  - 2.4.3 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 is on the reverse of report of visit forms. 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.

## 2.5 Accountability

- 2.5.1 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.
- 2.5.2 We have a complaints procedure "Have Your Say – Complaints, Comments and Compliments". Where a notice is served there is a right of appeal to an Employment Tribunal.

## 3.0 COMMUNICATION, LIAISON AND PARTNERSHIPS

- 3.1 This Authority will ensure that effective and efficient channels of communication and working links are maintained and developed with businesses, statutory bodies, trade organisations and associations, professional institutions, the local HSE, Enforcement Liaison Officer and other Leicestershire local authorities.
- 3.2 This Authority will provide businesses with clear and jargon-free information and advice on how to comply with current health and safety legislation and standards. The Authority will exercise the principles of transparency and openness in relation to health and safety matters.
- 3.3 This Authority supports HELA in its role of liaising between local authorities and the Health and Safety Executive to ensure that a co-ordinated and progressive approach to health and safety takes place.
- 3.4 To secure health and safety compliance, this Authority will take part in national and local initiatives depending upon the resources available.
- 3.5 To raise health and safety standards within small firms, this Authority will identify, assess and disseminate information about initiatives both locally and nationally.
- 3.6 This Authority will work in partnership with the Health and Safety Executive, Primary and Lead Authorities and other Leicestershire local authorities to ensure consistency of approach.

#### **4.0 AUTHORISATION AND INDEMNIFICATION OF OFFICERS**

The purpose of this section is to state the authority's policy with respect to:-

- a) Identification of officers appointed and authorised to take enforcement action.
  - b) Identification of the designation of the persons who may authorise a prosecution under the Health and Safety at Work etc. Act 1974 and other associated legislation.
  - c) Indemnification of officers authorised to take enforcement and prosecution action.
- 4.1 Any enforcement action under the Health and Safety at Work etc. Act 1974 and associated legislation will be initiated by competent enforcement officers who have been duly authorised by the Authority following HSC guidance [Ref. HSC (G) 2(Rev)].
- 4.2 Only officers authorised by the Authority under Sections 21 to 26 of the Health and Safety at Work etc. Act 1974 will serve improvement and prohibition notices.
- 4.3 Where, through upholding the principles outlined in the policy document, a prosecution is necessary, the following officer may authorise such action:-
- Head of Legal & Democratic Services
- 4.4 The following designated Officers will also be consulted as part of the prosecution decision making process:-
- Head of Regulatory Services  
Commercial Group Manager
- 4.5 Other officers may be consulted in addition to external advisors / experts where appropriate.
- 4.6 The designated Officers who are responsible for authorising a prosecution will be aware of the limits of their delegated powers by reference to the Councils Constitution, Statutory Codes of Practice and any other forms of guidance, including the principles set out in this policy.
- 4.7 Only officers who have been authorised by the Council to issue Improvement Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.
- 4.8 Only officers who have been authorised by the Council to issue Prohibition Notices will do so. Only an authorised officer who has personally witnessed the contravention(s) will sign the notice.
- 4.9 The Authority will indemnify authorised officers against the whole of any damages and costs or expenses provided they acted honestly, within their powers and not against instructions/procedures.

- 4.10 Only authorised officers that have been indemnified by the Authority will take enforcement action and exercise their statutory powers.
- 4.11 Where this policy is followed and an authorised officer considers legal proceedings the most appropriate course of action, then they should consult with their line manager. If the manager is of the same opinion then agreement of the appropriate Designated Officer should be gained before any further action is taken. The Legal Services Section should be then contacted immediately to discuss the offences and for information to be laid.
- 4.12 This Authority's policy in relation to prosecution action is detailed in Section 5 of this document.

## **5.0 ENFORCEMENT OPTIONS & PROSECUTIONS**

- 5.1 This Authority believes in firm but fair enforcement of health and safety legislation. The purpose of enforcement is to:
- Ensure that dutyholders take action to deal immediately with serious risks;
  - Promote and achieve sustained compliance;
  - Ensure that dutyholders who breach health and safety requirements, and directors and managers, who fail in their responsibilities, may be held to account.
- 5.2 Authorised Officers have a range of tools at their disposal in seeking to secure compliance with the law. Most actions are of an informal nature such as providing information, verbal advice and/or support which are confirmed in writing as necessary. Formal action (serving notices, issuing formal cautions and prosecutions) is reserved for more serious matters that can not be remedied informally.
- 5.3 The Enforcement Management Model (EMM) provides the Council with a framework for making enforcement decisions. It captures the issues inspectors consider when exercising their professional judgement and reflects the process by which enforcement decisions are reached. When considering the issuing of statutory notices, simple cautions or prosecution, all officers from this Council will apply the EMM principles (as outlined in HELA Circular 22/18) to promote consistency of approach.
- 5.4 Enforcement options that are available, having considered all relevant information and evidence are:-
- None
  - Informal action (advice, education etc.)
  - Issue Improvement notices
  - Issue Prohibition notices
  - Issue Simple Cautions
  - Prosecution
  - Prosecution of individuals
- 5.5 Informal Action

Informal action can take the form of advice, a verbal warning or a request for action, in the following circumstances: -

- 5.5.1 Where an act, omission or contravention is not serious enough to warrant formal enforcement action; and
- 5.5.2 Previous history in terms of the management of health and safety would suggest that informal action will achieve compliance; and
- 5.5.3 Confidence in the organisation, business, owner or occupier is high.
- 5.5.4 All verbal warnings, advice or requests for action, at the time of the inspection or as a result of any subsequent conversations, meetings or visits, that raise additional matters, will be confirmed in writing.
- 5.5.5 Where informal action is taken, legal requirements and recommendations will be clearly differentiated.

#### 5.6 Improvement Notices

Improvement notices will be issued when one or more of the criteria below apply: -

- 5.6.1 There are significant contraventions of health and safety legislation and they are likely to continue.
- 5.6.2 Where one or more health and safety contraventions have occurred and they are likely to be repeated.
- 5.6.3 There is a lack of confidence in the business/proprietor's organisation of health and safety management.
- 5.6.4 The business/proprietor has a history of non-compliance.
- 5.6.5 Standards are generally poor and the business/proprietor has little awareness or appreciation of their legal duties or of statutory requirements.
- 5.6.6 Effective action needs to be taken to remedy conditions that are serious and deteriorating.
- 5.6.7 Where there is a risk of ill health or injury, but not so as to warrant a prohibition notice.

#### 5.7 Prohibition Notices

A Prohibition Notice will only be considered in the following circumstance:

- 5.7.1 When an officer is of the opinion that an activity (or activities) carried on at a premises involve or will involve a risk of *serious personal injury*. The number of people affected by the risk is not relevant.
- 5.7.2 Whilst the risk does not have to be imminent before an immediate prohibition notice can be served; such notices will only be served where a risk of serious personal injury is such as to require action to be taken without delay to control that risk.

- 5.7.3 Whilst the risk does not have to be imminent before an immediate prohibition notice can be served; such notices will only be served where a risk of serious personal injury is such as to require action to be taken without delay to control that risk.
- 5.7.4 Immediate prohibition notices may be served not only where the risk is one of traumatic (acute) injury, but also where the risk is from a long term health hazard of a cumulative nature which will ultimately contribute to damage to health.
- 5.7.5 Deferred prohibition notices will be served when a greater risk would result if that activity was stopped immediately.
- 5.7.6 Where there is a Lead Authority Partnership in existence with a company where enforcement action is taken; then copies of letters, notices and other relevant matters will be sent to that Authority for their information/action.
- 5.7.7 Where there is a Primary Authority Partnership in existence with a company, contact will be made with the Authority once enforcement action is being considered.
- 5.7.8 All improvement and prohibition notices that are served will be placed on the Authority's public register if they relate to matters of a public concern. This is a requirement of the Environment and Safety Information Act 1988.
- 5.8 Simple Cautions
- 5.8.1 The aim of a Simple Caution is to: -
- a) Deal quickly and simply with less serious offenders;
  - b) Divert them from unnecessary appearance in the criminal courts; and/or
  - c) Reduce the chances of their re-offending.
- 5.8.2 It is the policy of this Council that: -
- a) A person will only receive a Simple Caution when the circumstances of the offence meet the criteria identified in the Home Office Circular 30/2005.
  - b) The Simple Caution will be administered by the "Cautioning Officer" from Environmental Health who is the Head of Environmental Health. Normally the Simple Caution will be administered in person by the "Cautioning Officer".  
  
In *exceptional* circumstances the Simple Caution may be administered by post.
  - c) The offender will be advised in writing of the proposal to issue a Simple Caution.

- d) The Simple Caution will be in writing using the prescribed form. Two copies of the form will be signed by the person receiving the caution; each copy will then be signed by the person administering the Caution. One of the copies will then be issued to the person receiving the Caution.
- e) Where the offender refuses to accept a Simple Caution or fails to return the signed copies within 14 days, consideration will be given to the institution of legal proceedings.

## 5.9 Prosecution

5.9.1 Detailed below are the criteria that the Council will take account of when considering legal proceedings.

5.9.2 The Local Authority always has the discretion whether or not to prosecute for an offence and the decision to prosecute should be based on the circumstances of each case. The criteria for prosecution must, in general, be related to risk or the seriousness of the offence, rather than being a punitive response to minor technical regulatory transgressions. All factors in the relevant Codes of Practice must be taken into account.

5.9.3 The decision to prosecute will have regard to the evidential and public interest tests set down in the Code for Crown Prosecutors. In all cases, a prosecution will only go ahead if there is sufficient evidence to provide a realistic prospect of conviction AND the prosecution would be in the public interest.

5.9.4 Following the application of the two test (in paragraph 5.9.3), this Authority will 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; (NOTE: 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, this Authority 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.)
- The gravity of the 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;

- 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.

5.9.5 This Authority 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.

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

5.10 Prosecution of an Individual

5.10.1 Subject to the above this Authority will identify and prosecute individuals if we consider that a conviction is warranted and can be secured. In addition we will actively consider the management chain and the role played by individual directors and managers where it can be shown that the offence was committed with their consent, connivance or negligence. In respect of directors and managers the following criteria will be considered:

- Whether the matter is clearly one over which the manager concerned had effective control.
- Whether the manager had personal knowledge of the circumstances surrounding the event that merits prosecution, although not necessarily personally aware of the matters at fault.
- Whether the manager failed to take obvious steps to prevent the event that is the subject of the proposed prosecution.
- Whether the manager received previous advice or warning of their responsibilities in relation to the type of act or omission in question.

- Where management is shared between two or more levels of managers, against whom it is possible to take proceedings. Only exceptionally should the more junior levels be prosecuted without similar action being taken against senior management.
- 5.10.2 This Authority will, where appropriate; seek disqualification of directors under provisions contained in the Company Directors Disqualification Act 1986 by referring relevant matters to the correct enforcing authority.
- 5.11 Prosecutions: Action by Courts
- 5.11.1 Many offences referred for prosecution will be heard in a Magistrates Court. However, certain offences are classed as triable either way offences & can be tried summarily in a Magistrates Court or on indictment in a Crown Court.
- 5.11.2 In the first instance all cases are heard in a Magistrates Court. Where an offence is `either way` & the defendant pleads guilty the facts will be heard & the Magistrates determine whether their sentencing powers are sufficient to deal with the offence. Where they do not consider they are adequate, the Magistrates refer the matter to Crown Court for sentencing.
- 5.11.3 Where a defendant facing an either way offence indicates that he would plead not guilty if the matter were to proceed to trial, then the Prosecutor & the accused are asked in turn which appears to be more suitable, summary trial or trial on indictment. When determining the Prosecutor's recommendation the Enforcement Officer & the Prosecutor will consider:
- The gravity of the offence;
  - The adequacy or otherwise of the powers of the summary court to punish the offence;
  - The record of the offender;
  - The magnitude of the risk; and
  - Any circumstances causing particularly great public alarm.
- 5.11.4 The Magistrates then decide which mode of trial appears more suitable, having regard to the nature of the case, whether the circumstances make the offence one of a serious character, & whether their powers would be adequate.
- 5.11.5 Where the Magistrates determine that the case can be tried in their Court, the accused can still elect to be tried in the Crown Court.
- 5.11.6 This Authority will in cases of sufficient seriousness consider indicating to the magistrates that the offence is so serious that they may refer it to be heard or sentenced in the higher court.
- 5.12 Prosecution: Death at Work

- 5.12.1 Where there has been a breach of the law leading to a work-related death, this Authority at an early stage, will consider whether the circumstances justify a charge of manslaughter or corporate manslaughter.
- 5.12.2 If the evidence suggests manslaughter, then this Authority will refer this to the Police or where appropriate the Crown Prosecution Service. If no action is taken by the Police/Crown Prosecution Service then the Authority may consider a health and safety prosecution where appropriate.
- 5.12.3 In all instances of work related deaths this Authority will follow the principles outlined in '*Work Related Deaths – A Protocol For Liaison*' when responding to work-related deaths.

## **6.0 INVESTIGATIONS**

- 6.1 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.
- 6.2 As with prosecution, this Authority will use discretion in deciding whether to investigate incidents, cases of ill health and complaints. To maintain a proportionate response most resources available for investigation are devoted to the more serious circumstances.
- 6.3 In selecting which complaints or reports of incidents, injury or ill health to investigate and in deciding the level of resources to be used, this Authority will take account of the following factors:
- The severity and scale of potential or actual harm;
  - The seriousness of any 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.
- 6.4 Officers will keep all service customers informed on the progress of the investigation into their complaint & upon the final results of the case at its conclusion.
- 6.5 Decisions on enforcement action, especially with respect to the issue of Simple Cautions or to prosecute must be taken in a timely manner upon the conclusion of the investigation. These enforcement decisions should be communicated to the affected parties without undue delay.
- 6.6 The Lead Environmental Health Officer (Occupational Health) and Commercial Group Manager will monitor Officer's workloads, investigations being conducted and compliance with timescales.
- 6.7 Where a decision to prosecute has been taken, regular monitoring of the case will be made by the Commercial Group Manager or in their absence the Head

of Environmental Health to ensure there is no undue delay in concluding the case.

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