

South Holland District Council – Health and Safety Enforcement Policy

This document describes how the Council enforces health and safety legislation. It will also explain what to expect from enforcement officers when they visit business premises, and what guides them when carrying out inspections and dealing with breaches in the law. This document supports the Council's wider Enforcement Policy, which is more generic and overarching as it covers a wider range of enforcement activity / disciplines.

Aim

The aim of the Council's Enforcement Policy is to ensure that duty holders manage and control risks effectively thus preventing harm. In particular our policy 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, are held to account, which may include bringing alleged offenders before the courts in the circumstances set out later in this policy.

The term "enforcement" has a wide meaning and applies to all dealings between the Council and those on whom the law places duties (employers, the self-employed, employees and others). The Council believes in firm but fair enforcement of health and safety law in line with HSE's Enforcement Policy Statement (EPS). This is 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 and are explained more fully in our Principles of Enforcement document (Annex 1). The Council places great importance on the consistent use of health and safety 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 the sake of doing so. 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.

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. 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 prosecutor finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest. Where circumstances warrant it and the evidence to support a case is available we will prosecute without prior warning or recourse to alternative sanctions.

Subject to the two tests referred to above, circumstances where we will normally prosecute, or recommend prosecution, following an investigation or other regulatory contact are 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;
- 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.

Where inspectors are assaulted we will also seek police assistance with a view to seeking the prosecution of offenders. 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. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

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).

The Health and Safety Executive's priorities are used to target our activities and resources via our Safety & Environment Team's Health and Safety Service Delivery 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 Council aim to:

- Inspect those premises for which it has enforcement responsibility and investigate accidents and complaints in accordance with the Councils selection criteria policy;
- Rate premises according to risk, (which includes management organisation, and the type of activities etc) in order to determine the frequency of future inspections;
- Seek to promote health and safety through advice and guidance, and by the provision of training; and
- Take formal enforcement action, in accordance with the EPS, when it is the most appropriate way of dealing with the matter.

Where we can we will endeavour to make provision for the particular interests of stakeholders. For example we may make visits out of normal office hours but at times when the business is open.

Anyone wishing to discuss or comment on our enforcement policy or Service Plan should email us at info.sholland.gov.uk or telephone us on 01775 761161.

Signed:

Date: 4 January 2011

Mick Dawson, Head of Community & Neighbourhood Services

Annex 1

Principles of Enforcement

The Council believes in firm but fair enforcement of health and safety law. 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.

The Purpose of Enforcement

The Health and Safety Executive (HSE) believes in firm but fair enforcement of health and safety legislation. 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, in the circumstances set out in HSE's Enforcement Policy Statement (EPS).

The Process of Enforcement

Inspectors use various enforcement techniques to deal with risks and secure compliance with the law, ranging from the provision of advice to enforcement notices. Enforcement decisions must be impartial, justified and procedurally correct. The HSE's EPS sets out the approach we follow.

The Enforcement Management Model (EMM), together with the procedure for its application, 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 judgement and reflects the process by which enforcement decisions are reached.

The Purpose of the EMM

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.

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. 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

Council Health & Safety Inspectors have a range of tools at their disposal to seek compliance with the law and to ensure a proportionate response to criminal offences. Where appropriate they may:

- Serve Improvement and Prohibition Notices
- Prosecute
- In very exceptional circumstances issue Formal Cautions.

Formal Cautions will not be used –

- As a let off
- Where there is some mitigating circumstances
- Where there is doubt about the public interest
- Where either the prosecutor's office or the court are too busy

Formal cautions will not be used where there is insufficient evidence to otherwise prosecute.

Complaints Procedure

Complaints are dealt with by our Customer Feedback Procedure.

The Procedures and Principles Of Enforcement

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.

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. 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.

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.

We will have regard to the principle of sensible risk management both in terms of the concept of proportionality and the targeting of enforcement activity (see below).

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.

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.

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, or the designer or client of the project. Where several duty holders have responsibilities we will take action against those who are primarily in breach.

When our inspectors issue improvement or prohibition notices or 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 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 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. 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 HSE

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. 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.

We will tell duty holders what to expect when an inspector calls and what rights of complaint are open to them. 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; and
- in the case of a prohibition notice, the notice will explain why the prohibition is necessary.

Accountability - 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. We have a complaints procedure "Customer Feedback Procedure". Where a notice is served there is a right of appeal to an Employment Tribunal.

Investigation

As with prosecution (see below), the HSE expects us to use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. The HSE's priorities are reflected in the HELA Strategy that we use to target our activities and resources via our Health and Safety Service

Delivery Plan. To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances.

The HSE's Strategic Plan recognises that it is neither possible nor necessary for the purposes of the Act to investigate all issues of non compliance with the law that are uncovered in the course of planned inspection, or reported events. 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 or the Primary Authority Scheme.

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. A more detailed policy on investigating reportable workplace accidents and ill health is detailed at Annex 2.

Prosecution

We will use discretion in deciding whether to initiate a prosecution. Our primary purpose is to help prevent harm, and while prosecution can draw attention to the need for compliance with the law, other approaches to enforcement can often promote health and safety more effectively.

The decision to prosecute will have regard to the evidential and public interest tests set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution will go ahead unless the prosecutor finds there is sufficient evidence to provide a realistic prospect of conviction and decides that prosecution would be in the public interest.

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 an investigation has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors that it is in the public interest to prosecute then that prosecution should go ahead. Where circumstances warrant it and the evidence to support a case is available we will prosecute without prior warning or recourse to alternative sanctions.

Subject to these two tests 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.
- false information has been wilfully supplied, or there has been an intent to deceive;

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.

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

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

We will make arrangements for the publication of the names of all the companies and individuals who have been convicted in the previous 12 months

of breaking health and safety law by submitting this information annually through the HSE's prosecutions return.

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. We will also consider publicising any conviction that could serve to draw attention to the need to comply with health and safety requirements, or deter anyone tempted to disregard their duties under health and safety law.

Action by the Courts

Where appropriate we will draw the court's attention to all the factors that are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given some guidance on some of the factors that should inform the courts in health and safety cases (R v F. Howe and Son (Engineers) Ltd [1992] 2 All ER, and subsequent judgments).

Representation to the Courts

In cases of sufficient seriousness, and when given the opportunity, we will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed.

In considering what representations to make we will have regard to Court of Appeal guidance: the Court of Appeal has said "In our judgment magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence".

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. We will liaise with the Police, Coroners and the Crown Prosecution Service and if they find 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, 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 take's account of the Protocol when responding to work-related deaths.)

Penalties for Health and Safety Offences[#]

Section and Contravention	Magistrates' court	Crown Court
S.33(1)(a) - S2 – S6	£20,000 and/or 6 months imprisonment*	Unlimited fine and/or 2 years imprisonment
S.33(1)(a) – S7	£5,000 and/or 6 months imprisonment *	Unlimited fine and/or 2 years imprisonment
(b) – S8	£20,000 and/or 6 months imprisonment *	Unlimited fine and/or 2 years imprisonment
(b) – S9	£20,000	Unlimited fine
(c) – any H & S regulations	£20,000 and/or 6 months imprisonment *	Unlimited fine and/or 2 years imprisonment
(d) – relating to S14 enquiries	£5,000 (Level 5)	Summary only
(e) – any requirement imposed by Inspector under S20 & S25	£20,000 and/or 6 months imprisonment *	Unlimited fine and/or 2 years imprisonment
(f) – attempting to / preventing a person speaking to Inspector	£20,000 and/or 6 months imprisonment *	Unlimited fine and/or 2 years imprisonment
(g) – contravention of a PN or IN	£20,000 and/or 6 months imprisonment *	Unlimited fine and/or 2 years imprisonment
(h) - obstruction	£5,000 (Level 5) and/or 6 months imprisonment **	Summary only

Section and Contravention	Magistrates' court	Crown Court
(i) – relating to S27	£5,000	Unlimited fine
(j) – disclosure in contravention to S28 and S27(4)	£5,000 and/or 6 months imprisonment *	Unlimited fine and/or 2 years imprisonment
(k) – false statement	£20,000 and/or 6 months imprisonment *	Unlimited fine and/or 2 years imprisonment
(l) – false entry in register	£20,000 and/or 6 months imprisonment *	Unlimited fine and/or 2 years imprisonment
(m) – use a document with intent to deceive	£20,000 and/or 6 months imprisonment *	Unlimited fine and/or 2 years imprisonment
(n) – impersonating an inspector	£5,000 (Level 5)	Summary only
(o) – relating to S42 orders	£20,000 and/or 6 months imprisonment *	Unlimited fine and/or 2 years imprisonment
Any other offence under existing statutory provisions	£20,000 and/or 6 months imprisonment *	Unlimited fine and/or 2 years imprisonment

* The maximum term of imprisonment that may be imposed by a magistrates' court is currently 6 months. When s154(1) of the Criminal Justice Act 2003 is brought into force the maximum term will be increased to 12 months.

** The maximum term of imprisonment that may be imposed by a magistrates' court is currently 6 months. When s281(5) of the Criminal Justice Act 2003 is brought into force the maximum term will be increased to 51 weeks in England and Wales or 12 months in Scotland.

Summary of maximum penalties under Health and Safety (Offences) Act 2008 for offences committed on or after 16 January 2009 These penalties can change from time to time.

Annex 2

Incident Investigation

It is the policy of the Council to investigate reportable accidents under the Reporting of Injuries, Disease, and Dangerous Occurrences Regulations 1995 according to the criteria set out below. An initial assessment of the incident will be made and a decision taken on investigation within 3 working days. They will be investigated in accordance with the principles of proportionality, consistency, targeting, transparency and accountability.

The purpose of investigation is to:

- Identify immediate and underlying causes;
- Ensure the duty holder takes appropriate remedial action to prevent reoccurrence;
- Evaluate compliance with the relevant statutory provisions; and
- Apply the principles of the Enforcement Management Model and take enforcement action if appropriate.

Investigations will be:

- Continued only so far as they are proportionate to the achievement of the objectives set for them [see below];
- Conducted and/or supervised by staff who are competent;
- Provided with adequate resources and support, including information, equipment and staffing;
- Conducted so that efficient and effective use is made of the resources committed to them;
- Timely, so far as this is within the control of the investigating inspector; and
- Subject to suitable management procedures for monitoring the conduct and outcome of investigations.

Factors to determine whether an investigation continues to be proportionate:

- Public expectation, for example, where there has been a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries;
- The potential (taking into account reasonable foreseeability) for a repetition of the circumstances to result a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries either in the activities of a specific duty holder or within industry generally;

- The extent to which the available evidence allows conclusions as to causation to be drawn and supported with sufficient certainty, including conclusions as to responsibility for alleged breaches of relevant legislation;
- The extent to which the resources needed for the investigation are disproportionate to the hazard(s) or risk(s); and
- The prevalence of the event, either in the activities under the control of a specific duty holder, or in an industry sector generally.

Criteria for Investigating RIDDOR Reports

All reports that meet the following criteria should be selected for investigation, subject to the qualifications in Part C.

Part A – Injury / incident types

- All fatalities arising out of work activities except those relating to most road traffic incidents;
- The following major injuries to persons at work, as defined in the Reporting of Injuries, Diseases and Dangerous Occurrence Regulations (RIDDOR) irrespective of cause:
 - All amputations of digit(s) past the first joint;
 - amputation of hand/arm or foot/leg;
 - serious multiple fractures;
 - crush injuries leading to major organ damage (e.g. ruptured spleen);
 - serious head injuries involving loss of consciousness
 - full thickness burns and scalds;
 - permanent blinding of one or both eyes
 - scalping.
- All incidents which result in a RIDDOR-defined major injury in the following categories:
 - workplace transport incidents¹;
 - electrical incidents;
 - falls from a height of greater than 2m;
 - confined space incidents.
- All RIDDOR -defined asphyxiation;
- All reported cases of disease which meet the criteria for reporting under RIDDOR, except those arising from circumstances/situations which have already been investigated.

Part B - Circumstances requiring: Judgment as to seriousness

- All incidents likely to give rise to serious public concern where ² this is related to the seriousness of the outcome, potential outcome, or breach of health and safety law.
- Irrespective of the potential for serious public concern, all incidents resulting in RIDDOR-defined major injuries, where it appears from the report that there is likely to have been a serious breach ³ of health and safety laws.
- Dangerous occurrences, where it appears from the report that the outcome/potential outcome or apparent breach of law is serious.

Part C - Circumstances which may qualify the criteria in Parts A or B

- Inadequate resources due to other priorities (must be referred to Head of Service or equivalent);
- Impracticability of investigation e.g. unavailability of witnesses or evidence or disproportionate effort will be required.
- No reasonably practicable precautions available for risk reduction.

Notes.

¹ Involvement in work-related road traffic incidents will be restricted to certain specific situations. For example, where work vehicles are engaged in specific work activities, other than travelling, on the public highway. The role of health and safety enforcing authorities in work-related road safety is currently being reviewed by the Government's Work-Related Road Safety Task Group.

² That is concern to the public in general, rather than to those individuals immediately involved. Unless there is clear evidence to the contrary, the presumption is that incidents involving children, vulnerable adults, multiple casualties and also where the outcome/ potential outcome or breach is serious, will be included.

³ A serious breach of the law is one where it is expected that an enforcement notice or a prosecution would be the outcome of the investigation.

Annex 3 – Complaints about Health and Safety

We aim to make an initial response within 5 working days of the complaint / request for service being made to the Council. In deciding whether to investigate we will take into account the following factors;

- The severity and scale of actual or potential harm, or the high potential for harm arising from an event;
- The seriousness of any potential breach of the law;
- The track record of the duty holder;
- The enforcement priorities of the Council;
- The practicality of achieving results;
- The wider relevance of the event including serious public concern.