

## **APPENDIX F**

### **SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (HEALTH AND SAFETY)**

The purpose of this appendix is to give further guidance on the provisions of the Health and Safety at Work etc. Act 1974 and subordinate legislation.

#### **Health and Safety at Work etc. Act 1974**

Our policy is to protect the health, safety and welfare of people at work and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out.

We enforce health and safety law in certain workplaces within the district including offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises.

The ultimate purpose of our health and safety enforcement function is to ensure that employers and those having a duty under the Act, manage and control risks effectively thus preventing harm.

The Authorised Officer of the Council will liaise with other agencies where appropriate, including the Health and Safety Executive, local authorities involved with the Primary Authority Scheme or Lead Authority Partnership Scheme (LAPS) and any other appropriate agency before enforcement action is taken to ensure consistent and coherent regulation.

#### **Enforcement of regulated premises**

The appropriate use of enforcement powers, including prosecution, is important both to secure compliance with the law and to ensure that those who have a duty under it may be held to account for failures to safeguard the health, safety and welfare of employees or the public. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

The purpose of enforcement is

- to ensure that duty holders take action to deal immediately with serious risks and
- to promote and achieve sustained compliance with the law,
- to ensure that duty holders who breach health and safety requirements and directors or managers who fail in their responsibility, are held to account. This may include bringing alleged offenders before the courts.

The Authorised Officer has a number of options available to secure compliance with the law and demonstrate a proportionate response to criminal offences. The powers available include:

#### **Preventative / remedial action**

- Informal letter
- Improvement Notices
- Prohibition Notices
- Seizure

## **Criminal enforcement responses**

- Prosecution
- Simple Caution

An Improvement Notice or Prohibition Notice is served with the broad aim of dealing with serious risks to health and safety, securing compliance with health and safety law and preventing harm. The notices require offenders to cease activities in contravention of the law or give offenders reasonable time to rectify a contravention. A Prohibition Notice stops work or use of a piece of equipment in order to prevent serious personal injury.

The Authorised Officer acting on behalf of the Council has powers to seize unsafe goods or equipment to prevent it causing harm to people. When goods or equipment are seized an officer will leave an appropriate receipt.

## **Investigations**

The Authorised Officer of the Council shall determine whether incidents, cases of ill health, or complaints should be investigated. 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.

In deciding what resources to devote to investigations, we will have regard to the principles of enforcement set out in this statement and the objectives published in the Health and Safety Executive / Local Authority Enforcement Liaison Committee (HELA) strategic plans. In particular, in allocating resources the Council will strike a balance between investigations and mainly preventative activity.

To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. The Council recognises that it is neither possible nor necessary for the purposes of the Act, to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspections, or in the investigation of reported events.

In selecting which complaints or reports of injury or occupational ill health to investigate and in deciding the level of resources to be used, the officer will take account of the following factors:

- the severity and scale of potential or actual harm,
- the seriousness of any potential breach of the law,
- knowledge of the duty holder's past health and safety performance,
- the enforcement priorities,
- the practicality of achieving results,
- the wider relevance of the event, including serious public concern

In considering whether the law has been complied with, the Authorised Officer will have regard to relevant Approved Codes of Practice (ACOP) and guidance issued by the Health

and Safety Executive and HELA. The officer will apply sensible judgement about the extent of the risks and the effort that has been applied to counter them.

Decisions involving significant resources will need approval from the Service Director or Service Manager.

The Enforcement Management Model (EMM) will be referred to when considering formal action for breaches of the law. Where action taken differs from that indicated by the EMM the reasons for this will be documented and reasonable.

### **Representations 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, the Authorised Officer/Solicitor will have regard to Court of Appeal guidance.

### **Death at work**

The Authorised Officer will carry out a site investigation of all reportable work-related deaths that have taken place in a local authority enforced premises. Where there has been a breach of the law leading to a work-related death, the Council will consider whether the circumstances of the case might justify a charge of corporate manslaughter.

The police and Crown Prosecution Service (CPS) have legal responsibility to pursue a charge of manslaughter if appropriate. The Council are responsible for investigating contraventions of health and safety. If in the course of their health and safety investigation an Authorised Officer finds evidence suggesting that a manslaughter incident may have occurred, they will pass it to the police for their consideration. If the police or the CPS decide not to pursue a manslaughter case we will normally bring a health and safety prosecution in accordance with this policy.

To ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, the HSE, the Association of Chief Police Officers (ACPO) and the CPS have jointly agreed and published "Work-Related Deaths: A Protocol for Liaison". The Authorised Officer acting on behalf of the Council will take account of this protocol when responding to work-related deaths.