

HASTINGS BOROUGH COUNCIL

ENFORCEMENT POLICY

UNDER THE HEALTH AND SAFETY AT WORK ETC. ACT 1974

AND RELEVANT STATUTORY PROVISIONS

1.0 INTRODUCTION

Hastings Borough Council (HBC), as an enforcing authority under the 'Health and Safety at Work etc Act 1974, aims to protect the health, safety and welfare of people at work in those classes of premises allocated to it by the Health and Safety (Enforcing Authority) Regulations 1998, by transfer under Section 5 of those regulations, or where a joint warranting protocol has been agreed between the Local Authority and the Health and Safety Executive (HSE), and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out.

This Enforcement Policy Statement accords with the enforcement policy statement of the Health and Safety Executive and is in accordance with the *Regulators Compliance Code*¹, the *Enforcement Concordat* (to which Hastings Borough Council is a signatory), and the regulatory principles required under the Legislative and Regulatory Reform Act 2006. It sets out the general principles and approach which we are expected to follow. All HBC staff who take health and safety enforcement decisions are required to follow this Enforcement Policy Statement. In general, those staff will be inspectors, so this policy refers to inspectors for simplicity. All appointed inspectors will be authorised and competent to perform duties in line with this Enforcement Policy

¹ *In certain circumstances we may conclude that a provision of the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.*

A. The purpose and method of enforcement

1. The ultimate purpose of an enforcing authority is to ensure that duty-holders manage and control risks effectively, thus preventing harm. The term 'enforcement' has a wide meaning and applies to all dealings between the enforcing authority and those on whom the law places duties (employers, the self-employed, employees and others).

2. The purpose of enforcement is to:

- o ensure that duty-holders take action to deal immediately with serious risks to safety and ill health;
- o promote and achieve sustained compliance with the law;
- o ensure that duty-holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, may be held to account.

3. Whilst some legislation is prescriptive – spelling out in detail what must be done, 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 special legal status. Where an individual or organisation is not following the relevant provisions of an ACOP, the onus is on them to show that they complied with the law in another way. Advice is also often contained in guidance material published by the HSE describing good practice. Following such guidance is not compulsory, but doing so is normally enough to comply with the law. In considering whether the law has been complied with, inspectors will 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.

4. We have a range of tools at our disposal in seeking to secure compliance with the law and to ensure a proportionate response to offences. We may offer information, and advice, both face to face and in writing and may include a warning that in the opinion of the inspector, they are failing to comply with the law. We may also serve formal improvement and prohibition notices, issue simple cautions and may prosecute. Improvement and prohibition notices, and written advice, may be used in court proceedings. A prohibition notice stops work in order to prevent serious personal injury.

5. We will set down in writing the decision-making process which inspectors will follow when deciding on enforcement action, and make this available. The principles of this process will be in accordance with the *Regulators Compliance Code*¹, the regulatory principles required under the Legislative and Regulatory Reform Act 2006, and any guidance issued under the Regulatory Enforcement and Sanctions Act 2008.

B. The principles of enforcement

We believe in firm but fair enforcement of health and safety law through the principles of:

proportionality in applying the law and securing compliance;

targeting of enforcement action;

consistency of approach;

transparency about how we operate;

accountability for our actions.

Proportionality

1. Proportionality means relating enforcement action to the risk. In practice, applying the principle of proportionality means that we should take particular account of how far the dutyholder has fallen short of what the law requires, the extent of the risks to people arising from the breach and any actual harm that has been caused.

2. The principle of proportionality applies both where duties are specific and absolute and where they are 'so far as is reasonably practicable'. Deciding what is reasonably practicable to control risks involves the exercise of judgement. In deciding what is reasonably practicable, inspectors, in considering protective measures taken by duty-holders, must take account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is 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.

3. We will expect relevant good practice to be followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires dutyholders to evaluate explicitly the significance of the risks by way of a risk assessment to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.
4. Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences.

Targeting

1. Targeting means making sure that we use our resources on those duty-holders whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on those who are responsible for the risk and who are best placed to control it – whether employer, manufacturer, supplier, or others.
2. We have a system for prioritising enforcement resources according to the nature and extent of risks posed by a duty-holder's operations and the duty-holder's management competence. A relatively low hazard site poorly managed can entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place.
3. Enforcement action will be directed against the duty-holder responsible for the breach. Where several duty-holders have responsibilities, we may take action against more than one when it is appropriate to do so in accordance with this policy. A senior officer of the duty-holder concerned, at board level, will also be notified if applicable.

Consistency

1. Consistency of approach does not mean uniformity. Duty-holders have a reasonable expectation that inspectors will take a similar enforcement approach in similar circumstances to achieve similar ends.
2. In practice consistency is not a simple matter. Inspectors are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty-holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer. We will have arrangements in place to promote consistency in the exercise of discretion, including where applicable, effective arrangements for liaison with other enforcing authorities, lead authorities and, where they have been appointed, primary authorities.

Transparency

1. We will help businesses understand what is expected of them and what they should expect from the inspector. This includes making clear to duty-holders not only what they have to do under the law, but also where appropriate, what need not be done. We will distinguish between statutory

requirements and what is desirable but not compulsory. Additionally, we will leave the leaflet '*What to expect when a health and safety inspector calls*² .

2. We will also keep employees, their representatives, and others who might be affected by the actions of the business similarly informed whilst taking due regard of Freedom of Information and Data Protection legislation.

Accountability

We recognise that we are accountable for our actions. As such we will provide details of informal and formal complaints procedures, easily accessible to business, the public and employees. Where disputes cannot be resolved the rights and process of appeal will be explained.

C. Investigation

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.

2. To maintain a proportionate response our resources will be devoted to the more serious circumstances. 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 inspection, or in the investigation of reported events.

3. In selecting which complaints or reports of incidents, injury or occupational ill health to investigate and in deciding the level of resources to be used, we will take account of:

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

4. We will investigate all instances of reportable work-related death, unless there are specific reasons for not doing so, in which case those reasons should be recorded.

5. Where appropriate, investigations may be carried out by the 'Sussex Major Incident Team'.

D. Prosecution

1. Whilst prosecution is an essential element of enforcement, we will use discretion when deciding whether to bring a prosecution. Due regard will be made to Hastings Borough Council Corporate Enforcement policy⁵.

2. In coming to such a decision we will take into account the factors set down by the Director of Public Prosecutions in the '*Code for Crown Prosecutors*'³. The decision to prosecute will be kept under continuous review to ensure that there is sufficient evidence to provide a realistic prospect of conviction and that prosecution is in the public interest.

3. Subject to the above, we will normally prosecute, or recommend prosecution, where one or more of 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 if 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 or safety case;
- a duty-holder's standard of managing health and safety is found to be 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 willfully, 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. Where inspectors are assaulted, enforcing authorities will seek police assistance, with a view to seeking the prosecution of offenders.
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Prosecution of individuals

The prosecution of individuals will be warranted when, in considering the management chain and the role played by individual directors and managers, investigation reveals that an offence was committed with their consent or connivance or to have been attributable to neglect on their part. It may also be appropriate, to seek disqualification of directors under the Company Directors Disqualification Act 1986.

Publicity

1. We will publicise the names of convicted companies and individuals. Prosecutions will be brought to the attention of the local media.

2. A public register will be maintained of notices issued where the matters involved directly impact on public safety.

Action by the courts

We will continue to seek to raise the courts' awareness of the gravity of health and safety offences. When appropriate, we will draw to the court's attention all the factors which are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given

guidance on some of the factors which should inform the courts in health and safety cases (R v F Howe and Son (Engineers) Ltd [1999] 2 All ER, and subsequent judgments).

Representations to the courts

In serious cases we will consider indicating to the magistrates that the offence is of such a nature that they may wish to consider sending it to be heard or sentenced in the higher court where higher penalties can be imposed. 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*".

E. Death at work

Where there has been a work-related death, we will follow the jointly agreed and published procedures, '*Work-related deaths: A protocol for liaison*'⁴ to ensure decisions on investigation and prosecution are closely co-ordinated with other agencies. 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. We are responsible for investigating possible health and safety offences. If in the course of the health and safety investigation we find evidence suggesting manslaughter or corporate manslaughter, we will pass such information to the police. If the police or the 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.

F. Penalties for Health and Safety Offences

The Health and Safety at Work etc Act 1974 (the HSW Act), section 33 (as amended) sets out the offences and maximum penalties under health and safety legislation.

Failing to comply with an improvement or prohibition notice, or a court remedy order (issued under the HSW Act sections 21, 22 and 42 respectively):

Lower court maximum	£20 000 and/or 12 months' imprisonment **
Higher court maximum	Unlimited fine and/or 2 years' imprisonment

Breach of sections 2–6 of the HSW Act, which set out the general duties of employers, self-employed persons, manufacturers and suppliers to safeguard the health and safety of workers and members of the public who may be affected by work activities:

Lower court maximum	£20 000 and/or 12 months' imprisonment **
Higher court maximum	Unlimited fine and/or 2 years' imprisonment

Most other breaches of the HSW Act *, **contravening licence requirements and breaches of all health and safety regulations under the Act.** Regulations impose both general and more specific duties, such as the requirements to carry out suitable and sufficient risk assessment or to provide suitable personal protective equipment. Licensing requirements apply to high hazard activities such as asbestos stripping.

Lower court maximum	£20 000 and/or 12 months' imprisonment **
Higher court maximum	Unlimited fine and/or 2 years' imprisonment

On conviction of directors for indictable offences in connection with the management of a company (all of the above, by virtue of the HSW Act sections 36 and 37), the courts may also make a disqualification order (Company Directors Disqualification Act 1986, sections 1 and 2). The courts have exercised this power following health and safety convictions. Health and safety inspectors draw this power to the court's attention whenever appropriate.

Lower court maximum	5 years' disqualification
Higher court maximum	15 years' disqualification

Footnote

As at January 2009. These penalties can change from time to time.

* For some offences under section 33 of the HSW Act the penalties may vary. Details can be found in the explanatory note to the 'Health and Safety (Offences) Act 2008.

** The imprisonment sentencing option of 12 months will apply when section 154(1) of the Criminal Justice Act 2003 is enacted.

References

⁻¹ '*Statutory Code-of-Practice for Regulators*' published by Business Enterprise and Regulatory Reform and available at www.berr.gov.uk/files/file45019.pdf

⁻² '*What to expect when a health and safety inspector calls: A brief guide for businesses, employees and their representatives*' HSC14 HSE Books 1998 (single copy free) Web version available at www.hse.gov.uk/pubns/hsc14.pdf

⁻³ '*Code for Crown Prosecutors*' published by the Crown Prosecution Service and available at www.cps.gov.uk/publications/docs/code2004english.pdf

⁻⁴ '*Work-related deaths: A protocol for liaison*' Booklet MISC491 HSE Books 2003 www.hse.gov.uk/pubns/misc491.pdf

⁻⁵ 'Hastings Borough Council Corporate Enforcement Policy.'