

**Housing, Health and Communities Service – Commercial  
Team**

# **Health and Safety Enforcement Policy Statement**

**July 2010**

**[www.testvalley.gov.uk](http://www.testvalley.gov.uk)**



## INTRODUCTION AND SUMMARY

- 1 It is the policy of Test Valley Borough Council to strive to protect the health, safety and welfare of people at work and to safeguard all other persons who may be exposed to risks from the way in which work activities are carried out. The Council operates a Joint Warrant Scheme with the Health and Safety Executive (H.S.E), which is included in this policy. This Enforcement Policy Statement sets out the general principles and approaches which Test Valley Borough Council will follow when considering enforcement action. Approval for the updated Council Enforcement Policy was given by the Cabinet Committee on 17<sup>th</sup> December 2008.
- 1.1 This policy provides detailed information relating to the Council's approach to enforcement of the Health and Safety at Work etc. Act 1974, and all its relevant statutory provisions and regulations.
- 1.2 The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard the health, safety and welfare of employees and non-employees. Officers enforcing health and safety legislation shall follow the graduated approach principles. In determining the nature of any enforcement action the Council is fully committed to having due regard to the advice given in statutory Codes of Practice and guidance issued by the Health and Safety Executive, the HSE/Local Authority Enforcement Liaison Committee's (HELA), and the Local Better Regulation Office (LBRO).
- 1.3 In addition the Council has fully adopted the principles of the Governments Regulators Compliance Code. This Policy Statement has also been written with consideration to the HSE's Principles of Health and Safety Enforcement.
- 1.4 The Council will seek to ensure compliance with all legislation but will carry out its duty in an appropriate manner according to the following principles:
  - **Proportionality.** Any action taken will relate to the seriousness of the risk to the health, safety and welfare of any individual and to the seriousness of any breach of legislation;
  - **Consistency.** Test Valley Borough Council wishes to be consistent in its approach to health and safety enforcement action, including prosecution. To achieve and maintain consistency, officers will always have regard to appropriate guidance in HELA, HSE guidance, LACORS and this policy.

Duties will be carried out in a fair, equitable and consistent manner. While Inspectors are expected to exercise judgement in individual cases, there are arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by HELA.

- **Transparency.** The Council will try to help employers to understand what the law requires of them and give clear guidance on how this can be achieved. Realistic timescales for works to be carried out will also be given. We will also make clear what options are available to employers, if they are not happy with any action we have taken or are proposing to take;

- **Targeting.** Our enforcement efforts will be directed against those whose activities pose the most serious risks, where hazards that are least well controlled or those who have a history of non-compliance.
- **Accountability.** The Council is accountable to the public for its actions. Policies and standards will be produced against which judgements can be made and a mechanism put in place for dealing with comments and handling complaints.

- 1.5 The Council will, where possible, endeavour to use its enforcement powers as a means to an end, rather than pursuing enforcement for its own sake. Clear guidance, information and advice will be given to persons, organisations or businesses so as to positively encourage compliance with the legislation.
- 1.6 The Council is fully committed to providing information and training for businesses in an effort to bring about improved standards.
- 1.7 All appointed Inspectors will have regard to this policy when making enforcement decisions. Any departure from the policy must be exceptional, capable of justification and be approved by the Principal Environmental Health Officer or Environmental Health Manager, before the decision is taken, unless it is considered that there is a significant risk to employees or the public in delaying the decision.
- 1.8 Appointed Inspectors will have due regard to the Policy and all relevant procedures when taking any formal action. Initial and ongoing training of appropriate members of staff will be undertaken. Appointed inspectors' activities will be monitored in line with the Section 18 Standard to ensure compliance with this policy.
- 1.9 This policy will be reviewed in the light of experience and any new relevant guidance issued by the HSE.

## **2. PURPOSE OF HEALTH AND SAFETY ENFORCEMENT**

- 2.1 The purpose of enforcement by the health and safety regulatory service of Test Valley Borough Council is to;
- promote, educate and achieve sustained compliance with legislation;
  - prevent accidents and ill health;
  - deal immediately with serious risks;
  - put flagrant breaches and serious or repeated offenders before the Courts;
  - enable the Courts to uphold the law by punishing offenders and deterring others.

This policy will promote consistency both within the authority and between different authorities.

- 2.2 Test Valley Borough Council inspectors are not involved in obtaining compensation for people injured in an accident, this is a civil action and advice should be sought from a Legal Service. Inspectors will provide a factual statement to the injured party's Lawyers

detailing the investigatory actions which have been undertaken. The leaflet *After an Accident* provides useful information to injured parties and their families.

- 2.3 Test Valley Borough Council as enforcement authority for health and safety:
- will investigate accidents, dangerous occurrences, reportable work related deaths, which meet the selection criteria;
  - will carry out inspections of premises based upon risk;
  - will carry out investigations following a complaint, in line with our procedures;
  - will consider what enforcement action to take following an inspection, complaint or investigation in line with this enforcement policy statement, and the Enforcement Management Model (EMM);
  - has by designation, a variety of health and safety enforcement decision makers and the limits of their authorisation;
  - has defined formal and informal actions and will clearly communicate distinctions between legal requirements, recommendations and advice on good practice;
  - has identified the criteria for prosecution and will ensure that these are, in general, related to risk, and in line with the EMM.
- 2.4 Reports from Inspectors will be put clearly and simply and will normally be confirmed in writing, explaining why any remedial action is necessary and agree a timescale to carry out works and ensure that legal requirements are clearly distinguished from advice and good practice.
- 2.5 Before formal enforcement action is taken, authorised Inspectors will whenever possible provide an opportunity to discuss the circumstances of the case and if possible resolve points of difference, unless immediate action is required.
- 2.6 Where enforcement action is considered necessary, an explanation of why such action is required will be given at the time and in most cases confirmed in writing within five working days and in all cases, within a reasonable working period.
- 2.7 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible, this advice will be issued with the enforcement notice).
- 2.8 Where there is a concern about the consistency of enforcement action proposed, the issue may be taken to the Hampshire Health and Safety Liaison Group, which is set up to discuss such enforcement issues.

### **3. LEGISLATION**

- 3.1 All enforcement action will be determined by a failure to comply with health and safety legislation. The type of enforcement action will depend on the extent of failure to comply with legislation together with any other relevant facts.
- 3.2 The principal legislation is the Health and Safety at Work etc Act 1974.
- 3.3 The Act is an enabling Act, with Ministerial powers to produce secondary legislation in the form of regulations.

3.4 Failure to comply with one or more of these regulations, and where the other criteria are met, will result in enforcement action of some form. The Health and Safety at Work, etc. Act 1974 is prescriptive in the service of statutory notices and prosecution.

#### **4. AUTHORISATION OF DECISION MAKING**

4.1 Only Inspectors appointed under the Act will carry out enforcement action. Appointments are made in line with the Council's Constitution and the "Scheme of Delegation".

4.2 The decision to serve notice will be taken by an authorised officer and verified by the Principle Environmental Health Officer, Environmental Health Manager or another authorised officer.

4.3 The Council will ensure that Inspectors who are authorised to initiate enforcement action are competent to do so, suitably qualified and have relevant and adequate experience in health and safety enforcement.

4.4 The Council will assess the competence of appointed Inspectors, ensuring training is provided as appropriate, which will be assessed through the Section 18 Standard.

#### **5. ENFORCEMENT OPTIONS**

5.1 Test Valley Borough Council will ensure that enforcement decisions are always consistent, balanced and fair. In coming to any decision the Council's officers will consider various criteria including:

- the severity and scale of actual or potential harm;
- the seriousness of the offence;
- the organisation's past history;
- their confidence in management;
- the consequences of non-compliance;
- the likely effectiveness of the various enforcement options; and
- HSE guidance.

5.2 Having considered all relevant information and evidence, the types of enforcement actions that can be taken are:

- informal action;
- serve statutory notices;
- deal with the cause of imminent danger (Section 25 of Health and Safety at Work, etc. Act 1974);
- give simple cautions;
- prosecution.

This document provides detailed guidance relating to the various options for enforcement action.

5.3 Where Inspectors are considering taking enforcement action, which they believe may be contrary to any advice issued by the relevant Lead Authority/ Primary Authority they will discuss the matter with the relevant authorities before taking action. Test Valley Borough Council recognises that where enforcement action impacts on aspects of an

organisation's policy which has been agreed centrally, then reference to the Lead Authority/Primary Authority will be made.

## **6. INFORMAL ACTION**

- 6.1 Informal action to secure compliance with legislation includes offering advice, verbal warnings, the use of letters and the issue of health and safety inspection reports, including those generated following inspection of premises.
- 6.2 The circumstances in which it is appropriate to use informal action include one or more of the following:
- the act or omission is not serious enough to warrant formal action;
  - from the proprietor's past history it can be reasonably expected that informal action will achieve compliance;
  - confidence in the proprietor's management is high;
  - the consequences of non-compliance will not pose a significant risk to employee/public safety.
- 6.3 Inspection reports will be issued following all programmed inspections. This applies even in those circumstances where conditions at the time of inspection are satisfactory.
- 6.4 When an informal approach is used to secure compliance with health and safety legislation the written documentation issued or sent to proprietors will:
- contain all the information necessary to understand what work is required and why it is necessary;
  - indicate measures which will enable compliance with legal requirements and state that other means of achieving the same effect may be chosen; and
  - clearly indicate which items are good health and safety practice and which are legal requirements.
- 6.5 When enforcing legislation, the Council recognises the need to clearly differentiate between legal requirements and matters which are recommended as good practice even if only giving verbal advice.

## **7. STATUTORY NOTICES**

### **7.1. Improvement Notices (IN)**

- 7.1.1 Improvement Notices may only be issued by Inspectors who have been appointed under the Act by the Council to do so. They must witness the offence before signing the notice. The use of Improvement Notices should be related to risk and should not be used for minor breaches. The relevant appeals leaflet will be enclosed with Improvement Notices. Circumstances in which an Improvement Notice should be served are as follows:
- there are significant contraventions of legislation;
  - there is a lack of confidence in the proprietor or management to respond to an informal approach;
  - a history of non-compliance with informal action;

- standards are generally poor with little management awareness of statutory requirements;
- the consequence of non-compliance could lead to a risk of serious personal injury;
- although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

7.1.2 Inspectors serving notices must confirm with the recipient that the time period given to comply with the notice is reasonable and inform them that failure to comply with a notice is an offence and likely to result in Court proceedings. They must also be informed of their rights of appeal.

7.1.3 Inspectors must have sufficient evidence to justify service of notice, be prepared to pursue non-compliance in the Courts and be satisfied that proceedings are likely to succeed.

7.1.4 Close liaison may be required with other bodies (i.e., Lead Authorities, Primary Authorities, HSE, HELA and LACORS) and appropriate practices will be adopted to ensure that this is achieved.

7.1.5 Failure to comply with an IN will normally result in prosecution for non-compliance with that notice.

## **7.2 Prohibition Notices (PN)**

7.2.1 A prohibition notice will be considered in the following circumstances:

- where a risk of imminent serious personal injury can be demonstrated

7.2.2 Only Inspectors fully appointed under the Act by the Council will issue a prohibition notice. They must have witnessed the offence and have considerable experience in health and safety enforcement situations. Unless there are exceptional circumstances such a notice will only be served with the approval of the Principle Environmental Health Officer or Environmental Health Manager or Head of Environment.

7.2.3 The following circumstances should be considered before the issue of a PN:

- the consequences of not taking immediate action to protect public/employee safety would be unacceptable;
- a risk of serious personal injury can be demonstrated. This might, include evidence from relevant experts.

7.2.4 Inspectors may need to contact other bodies to pass on information regarding any formal action and the outcome. Such bodies may include Lead Authorities, Primary Authorities and the HSE.

## **8. DEALING WITH IMMINENT DANGER**

8.1 Where an Inspector finds articles or substances are a cause of imminent danger of serious personal injury he/she may seize it and cause it to be rendered harmless. When undertaking such action the Inspector shall comply fully with the provisions of Section 25 of the Health and Safety at Work etc. Act 1974.

## **9. DECISION TO PROSECUTE**

### **9.1 The decision to prosecute will usually be considered in the following circumstances:**

- serious injury/ death resulting from a breach of the legislation;
- an employee or member of the public has been put at risk of serious personal injury;
- there is consistent refusal to achieve the basic minimum legal requirements;
- there has been blatant disregard of the law;
- there has been a failure to comply in full or in part with a legal notice;
- 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.

9.2 When circumstances have been identified which may warrant prosecution all relevant evidence and information will be considered so that a consistent, fair and objective decision can be made.

9.3 There must be sufficient evidence to provide a realistic prospect of conviction.

9.4 Reference must be made and action must be consistent with the Crown Prosecution Service guidance – Code for Crown Prosecutors, The Criminal Procedure and Investigations Act 1996, internal Legal Services guidance and to the relevant HSE/HELA guidance.

9.5 The evidence must be obtained in accordance with the procedures on gathering evidence as per the Police and Criminal Evidence Act 1984 (PACE), PACE Codes of Practice and the Criminal Procedure and Investigations Act 1996.

9.6 If in the course of investigations, officers consider that it is necessary to carry out covert surveillance then the investigating officer will seek authority under the provisions of the Regulation of Investigatory Powers Act 2002. This requires approval from a senior officer authorised under the Council's Constitution for this purpose.

9.7 The Inspectors role is to provide all relevant information or evidence in any particular case in order to allow a decision to be made as to whether proceedings should be instigated.

9.8 When decisions are being taken as to whether to prosecute regard will be had to the guidance contained in the relevant Codes of Practice and the following factors:

(a) The seriousness of the alleged offence:

- the risk of serious personal injury;
- identifiable victims;
- failure to comply with a statutory notice;
- disregard of safety for financial reward.



- (b) The previous history of the party concerned, for example:
  - offences following a history of similar offences;
  - failure to respond positively to past warnings;
  - failure to comply with statutory notices;
- (c) The suitability of any important witnesses and their willingness to co-operate.
- (d) The willingness of the party to prevent a recurrence of the problem.
- (e) The probable public benefits of a prosecution and the importance of the case e.g. whether it might establish a legal precedent. The general advice on public benefit is that, the graver the offence the less likelihood there will be that the public interest will allow anything other than a prosecution.
- (f) Whether any other action, such as issuing an Improvement Notice or imposing a Prohibition Notice, would be more appropriate or effective. (It is possible to prosecute as well as issue a notice; failure to comply with the notice would be an additional offence liable to prosecution).
- (g) Any explanation offered by the company or suspected offender.

- 9.9 Once a decision to bring legal proceedings has been made the matter will be referred to the Council's Legal Department without delay.
- 9.10 Subject to the above, the Council will identify and prosecute or recommend prosecution of individuals if they consider that a prosecution is warranted. In particular, the Council will consider the management chain and the role played by individual directors and managers and will take action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or to have been attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy. Where appropriate the Council will liaise with the Police, Crown Prosecution Service, and will seek disqualification of directors under the Company Directors Disqualification Act 1986.
- 9.11 The Council will make arrangements for the annual publication of the names of all companies and individuals who have been convicted in the previous 12 months for breaching health and safety legislation. The Council may consider drawing media attention to factual information about convictions and charges which have been laid before the Courts but will take care to avoid publicity which could prejudice a fair trial.
- 9.12 The Council in cases of sufficient seriousness and when given the opportunity the Council 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.
- 9.13 Death at Work: where there has been a breach of legislation resulting in a work-related death, the Council will consider whether the circumstances of the case justify a charge of manslaughter. The Council will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) and if they find evidence suggesting manslaughter pass it on to the Police or where appropriate the CPS. If the Police or the CPS decides not to pursue a manslaughter case the Council will bring a health and safety prosecution if that is appropriate. The Council will take account of *'Work Related Deaths: A protocol for Liaison'* when responding to work-related deaths.

## 10. SIMPLE CAUTIONS

- 10.1 If there is sufficient evidence to prosecute then a simple caution can be considered as an alternative. Reference must be made to Home Office Circular 30/2005 – Cautioning of Adult Offenders, which states the purpose of the caution.
- 10.2 Simple cautions should be considered to deal quickly and simply with less serious offenders, to divert them from unnecessary appearances in the criminal court and to reduce the chances of their re-offending.
- 10.3 The suspected offender must admit the offence and therefore the investigating officer must seek an informed consent from the offender to his acceptance of a caution.
- 10.4 To safeguard the defendant's interests the following conditions will need to be fulfilled before a caution is administered:
- there must be sufficient evidence of the suspected offender's guilt to give a realistic prospect of conviction;
  - the suspected offender must admit the offence;
  - the suspected offender must understand the significance of a caution and give informed consent to being cautioned.
- 10.5 If there is insufficient evidence to consider taking a prosecution then by implication the conditions are not satisfied for the use of a simple caution. It will also be inappropriate to use a simple caution where the suspected offender does not make a clear and reliable admission of the offence. It should be noted that there is no legal obligation for any person to accept the offer of a simple caution, and no pressure should be applied to the person to accept a caution.
- 10.6 If an offender is unwilling to accept a simple caution then the decision will need to be made whether to prosecute the offender or take alternative enforcement action.
- 10.7 Notifications of an issue of a simple caution must be made to the Lead Authority Partnership or the Primary Authority. **When a simple caution has been issued the Lead Authority or the Primary Authority must be notified.**

## 11. OVERLAPPING LEGISLATION

- 11.1 As a general principle the Council wishes to avoid duplicating the work which is the responsibility of other authorities. The Council will not generally investigate or enforce under health and safety legislation where health and safety is adequately guaranteed by enforcement of more specific legislation by another authority unless requested to do so under the Hampshire Joint Warrant Scheme.

## 12. ENFORCEMENT IN PREMISES IN WHICH THE COUNCIL HAS AN INTEREST

- 12.1 A potential conflict of interest arises in premises for which the Council is the relevant enforcing authority but in which they also have an ownership or management interest.
- 12.2 The Council cannot take action against itself. Where these circumstances arise the enforcement responsibility will be passed to the Health and Safety Executive. Only

where the duty holder is the Contractor or Occupier will the Council retain the enforcing responsibility.

12.3 Under circumstances where the Council retains the enforcement responsibility for such premises the Council will:

- carry out its enforcement in line with this policy in exactly the same way as it does in all other premises;

12.4 In all instances where potential conflicts of interests arise the HSE will be kept informed.

12.5 The Council will ensure that where it has both enforcement and duty holder responsibilities these responsibilities will not be held by the same officer, for a related investigation. The Council will always ensure the independence and objectivity of the enforcement role.

### **13. APPEALS**

13.1 Informal Appeals: Test Valley Borough Council always aims to give the best possible standard of service, and where this is not met an individual or business may refer to the Council's complaints procedure. If appropriate an informal appeal about the enforcement actions being taken will be considered by the line manager of the Inspector, however, this will not delay any action necessary to protect the immediate risks to the health and safety of employees or public affected by work activities.

13.2 Statutory Rights of Appeal: the informal appeal process does not prejudice any rights of appeal against enforcement action including the service of notices. All legal notices served will include information regarding statutory rights of appeal and the necessary appeal forms.

### **14. COMPLAINTS ABOUT INSPECTORS ACTIONS**

14.1 In the first instance any business or person who believes this policy has not been followed may bring this to the attention of the Principle Environmental Health Officer or Environmental Health Manager. If dissatisfied with the response they may implement the Council's formal complaints procedure, details of which will be provided upon request.

14.1 Test Valley Borough Council has procedures for dealing with comments and handling complaints which are available from Council offices, or can be accessed via the website [www.testvalley.gov.uk](http://www.testvalley.gov.uk) . In particular, they:

- describe a complaints procedure in the case of decisions by officials, or if procedures have not been followed; and
- explain about the right of appeal to the Local Magistrates Court against the service of a hygiene improvement notice or refusal by the local authority to lift a hygiene emergency prohibition order made earlier by the Court.

## **15. REVIEW OF POLICY**

- 15.1 This document will be subject to review as and when required, but will be reviewed at least every two years.

## **16 PUBLICITY**

Test Valley Borough Council will also consider in all cases drawing media attention to factual information about charges which have been laid before the courts, but great care will be taken to avoid any publicity which could prejudice a fair trial. Test Valley Borough Council will also consider publicising any conviction which 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, or helping to raise the standards in an industry sector.