

NORTH LINCOLNSHIRE COUNCIL

**HIGHWAYS AND NEIGHBOURHOODS
CABINET MEMBER**

HEALTH AND SAFETY AT WORK – ENFORCEMENT POLICY 2014

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To seek approval of a revised Enforcement Policy for Health and Safety.
- 1.2 The key points in this report are as follows:
 - The current Enforcement Policy contains a requirement for a review of the policy.
 - The review is now completed and enhancements made.

2. BACKGROUND INFORMATION

- 2.1 This policy applies to the enforcement of the Health and Safety at Work etc. Act 1974 and relevant statutory provisions carried out by officers of the council. This policy is modelled on guidance issued by the Health and Safety Executive (HSE).
- 2.2 The council is committed to the Enforcement Policy which complies with the statutory guidance in the Regulators' Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006. It sets out the general principles and approach which authorised council officers are expected to follow when taking enforcement decisions.
- 2.3 The current Health and Safety Enforcement Policy was approved in 2009. The policy requires a review every five years.
- 2.4 Officers have reviewed the existing policy to ensure it continues to meet statutory guidance and reflects best practice. It has been updated to include updated organisational details.
- 2.5 The Enforcement Policy has hardly changed in content and principle since its last review. A copy of the revised document is provided at Appendix 1.

2.6 The Enforcement Policy operates within the framework provided by the Technical and Environment Enforcement Policy. The policy provides the statutorily required focus on Health and Safety enforcement in North Lincolnshire.

3. OPTIONS FOR CONSIDERATION

3.1 **Option 1** – To approve the revised enforcement policy.

3.2 **Option 2** – To continue with the existing enforcement policy.

4. ANALYSIS OF OPTIONS

4.1 Option 1

4.1.1 Officers have updated the Health and Safety Enforcement Policy to reflect new organisational details and provide compliance with HSE guidance.

4.2 Option 2

4.2.1 The existing Enforcement Policy is inaccurate. It does not reflect the current enforcement arrangements.

4. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 The Enforcement Policy meets the requirements of statutory guidance.

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

6.1 No issues were identified from the integrated impact assessment.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED

7.1 Colleagues in Legal and Democratic Services were consulted and the information presented reflects the feedback received.

8. RECOMMENDATION

8.1 To approve and adopt the Health and Safety Enforcement Policy (appendix 1).

DIRECTOR OF PLACES

Church Square House
Scunthorpe
North Lincolnshire
DN15 6XQ

Author: Martin Allcock
Date: 25 November 2014

Background Papers used in the preparation of this report

- None.

TECHNICAL AND ENVIRONMENT SERVICES



HEALTH & SAFETY ENFORCEMENT POLICY

December 2014

HIGHWAYS & NEIGHBOURHOOD

HEALTH AND SAFETY AT WORK ETC ACT 1974

ENFORCEMENT POLICY STATEMENT

1. Introduction

- 1.1 This policy applies to the enforcement of the Health and Safety at Work etc. Act 1974 and the Relevant Statutory Provisions, carried out by officers of North Lincolnshire Council (the Authority) in respect of workplaces allocated under the Health and Safety (Enforcing Authority) Regulations 1998 (as amended). This policy is modelled on guidance issued by the Health and Safety Executive (HSE).
- 1.2 North Lincolnshire Council is committed to the policies set out in the Enforcement Policy which complies with the statutory guidance in the Regulators' Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006. It sets out the general principles and approach which the Council are expected to follow. All authorised Council Officers who take enforcement decisions are required to follow the Enforcement Policy.

2. General Statement

- 2.1 The aims of the North Lincolnshire Council are to protect the health, safety and welfare of employees and to safeguard others, principally the public, who may be exposed to risks from work activity. This document sets out the general principles and approach to enforcement taken by the Officers of this Authority. Underlying the policy is the consideration that there should be a quick and effective response to flagrant breaches of the law and a discriminating and efficient approach to other breaches.
- 2.2 The purpose of enforcement 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, may be held to account, which may include bringing alleged offenders before the courts.
- 2.3 The policy applies to all dealings, formal and informal, between inspectors and duty holders.
- 2.4 No ethnic discrimination will be made in the application of this policy.
- 2.5 Arrangements will be put in place to consult with businesses, members of the public and other interested parties to enable us to draw up clear standards regarding the level of service and performance to be provided.
- 2.6 Copies of this policy are available on request.
- 2.7 In allocating resources, a balance will be struck between investigations and mainly preventative activity. Regard will be made to strategic plans set by the HSE.

3. The Principles of Enforcement

- 3.1 The approach to enforcement is informed by the principles of proportionality in applying the law and securing compliance, consistency of approach, targeting of enforcement action, transparency and accountability.
- 3.2 Proportionality - means relating enforcement action to the risks. The action taken to achieve compliance should be proportionate to any risks to health and safety and to the seriousness of any breach of the law.
- 3.3 Consistency - means taking a similar approach in similar circumstances to achieve similar ends. Duty holders managing similar risks, in similar circumstances, will receive enforcement action based on that level of risk. Effective liaison with other enforcing authorities will assist in this.
- 3.4 Transparency - means helping duty holders to understand what is expected of them and what they should expect from the enforcing authority. 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.
- 3.5 Targeting - means making sure that inspections are targeted primarily on those whose activities give rise to the most serious risks or where hazards are least well controlled. To help achieve this, the Authority will operate a priority planned inspection programme, whereby the frequency of inspections is related to the risk associated with premises. This will also take into account strategic priorities planned in partnership with the HSE and local initiatives identified as a priority in workplaces in North Lincolnshire.
- 3.6 Accountability - Authorised Inspectors are accountable to members, the public and the Government for their actions. All Health and Safety activities will be carried out in accordance with approved practices and procedures and an effective mechanism for dealing with complaints against Authority officers will be maintained to respond to complaints and comments.

4. Enforcement Options

- 4.1 In deciding on the course of enforcement action to be taken, regard will be given to the circumstances including:
 - the severity and scale of potential or actual harm;
 - the general record of the offender;
 - the consequences of non-compliance;
 - the seriousness of the offence;
 - public interest and concern;
 - the likely effectiveness of the various enforcement options;
 - the views of the Lead Authority, where appropriate;
 - the practicality of achieving results;
 - the enforcement priorities.
- 4.2 Any decision to prosecute will also take into account the criteria set down in the Code for Crown Prosecution. Any decision to issue a simple caution will have regard to guidance issued by the Home Office.

- 4.3 Subject to the above, the Authority, through its officers, will identify and prosecute individuals including company directors, managers and employees, where it is considered that a conviction is warranted and can be secured.
- 4.4 The table below identifies the principal enforcement options and the general indicative criteria for each option. The listing of these options does not preclude the giving of verbal and written advice, or other options such as training provision when this is appropriate.
- 4.5 It is recognised that the final choice of enforcement action is a matter of judgement and discretion, determined by the Authority's appointed officers.

TABLE

Option	General Indicative Criteria
No action	premises satisfactory
Verbal notice	minor contraventions
Informal Notice	contraventions not requiring immediate formal action
Improvement Notice	more serious contraventions, or repeated/continuing contraventions
Prohibition Notice	risk of serious personal injury
Seizure of articles/rendering articles harmless	imminent danger to health or safety
Simple Caution	first time offence, of a less serious nature
Prosecution	serious or flagrant breach of health and safety requirement (see Appendix 1)

5. Death at Work

- 5.1 Where there has been a breach of the law leading to a work related death, the Police will be asked to carry out a preliminary investigation to determine whether the circumstances of the case justify a charge of manslaughter or corporate manslaughter. If no action is taken by the Police, the Authority may consider a health and safety prosecution where appropriate. The decisions taken by the Authority on investigation and prosecution will follow the 'Work Related Deaths: A Protocol for Liaison' document which sets out the principles for effective liaison in relation to work related deaths and has been agreed by the HSE, the Association of Chief Police Officers and the Crown Prosecution Service. Where an Inspector has collected sufficient evidence to provide a realistic prospect of conviction, has taken into account this guidance and that provided in the Code for Crown Prosecutors and has established that it is in the public interest to prosecute, then the prosecution should go ahead.

6. Working with Others

- 6.1 In all cases where consideration is given to serving a formal notice or to prosecution, the Lead or Primary Authority, if any, for the company will be consulted. This does not preclude immediate action being taken where there is an imminent risk to health or safety.

- 6.2 The Authority will liaise with and bring areas of concern to the most appropriate body for advice and or enforcement. Such bodies would include for example, the HSE, Primary Authorities, the Humberside Fire and Rescue Service, OFSTED, and the Care Quality Commission.

7. Statutorily Reportable Matters and Complaints

- 7.1 A systematic approach will be adopted to ensure that reports and complaints receive appropriate attention. In determining which matters to investigate, regard will be given to any guidance issued by the HSE and by the HSE's Local Authority Unit (LAU).
- 7.2 Accidents and Health and Safety complaints will be investigated using a risk based approach having regard to national guidelines and local circumstances.

8. Enforcement in premises in which the Local Authority have an interest

- 8.1 Where this authority has an interest in premises for which it also has enforcement responsibilities, its officers will:
- Carry out its enforcement policy and practice in exactly the same way that it does all other premises.
 - Ensure that the attention received is in accordance with the criteria applied to other duty holders.
- 8.2 Where a potential conflict of interest is identified in premises or with activities with which this authority has an interest, regard will be given to guidance issued by LAU and the HSE. Where applicable the HSE will be kept informed of any situations in which it might have an enforcement interest.
- 8.3 Where the investigation of an incident by this Authority's officers results in evidence being collected that could also be of value to the HSE in respect of matters in which it might have an enforcement interest, the HSE Liaison Officer should be informed of this information, which shall be made freely available to the HSE's Officers if requested. Similar liaison would apply to other agencies e.g. Trading Standards, Fire Authority etc.

9. Arrangements to Implement the Policy

- 9.1 Written procedures which support this policy will detail the means of effecting it. Such procedures will be regularly reviewed and updated having regard to national guidelines and local circumstances.
- 9.2 Enforcement will only be undertaken by authorised officers. Only competent and suitably qualified and experienced officers will be so authorised, and their authority will reflect their competence, qualities and experience. In considering competency, regard will be given to guidance issued by the Health and Safety Executive under Section 18 of the Act, and to any guidance issued by LAU.

10. Review

10.1 This policy will be reviewed every 5 years and in the event of any significant change of circumstances, taking into account any changes in guidance issued by HSE, changes to legislation and local needs identified through consultation processes.

11. Representations to the Courts

11.1 In cases of sufficient seriousness, and when given the opportunity, the authority should 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 authority should have regard to Court of Appeal guidance: the Court of Appeal has said 'In our judgement 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'.

Appendix 1 – Deciding to Prosecute

In the public interest, the 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;¹
- 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 non-compliance with an appropriate licence or safety case;
- a duty holder'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 formal 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.

Where inspectors are assaulted, enforcing authorities will seek police assistance, with a view to seeking the prosecution of offenders.

The Authority will, in the public interest, consider prosecution, or consider recommending prosecution, where following an investigation or other regulatory contact, one or more of 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 which gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.
- The Authority will identify and prosecute individuals if they consider that a conviction is warranted and can be secured. The Authority will consider the management chain and the role played by individual directors and managers and 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, disqualification of directors will be sought under the Company Directors Disqualification Act 1986.

¹ Health and safety sentencing guidelines regard death resulting from a criminal act as an aggravating feature of the offence. If there is sufficient evidence, HSE 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.