

Title	Health & Safety Enforcement Policy Review
For further information about this report please contact	Rob Chapleo (01926 - 456707)
Service Area	Environmental Services
Wards of the District directly affected	All
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	No
Date and meeting when issue was last considered and relevant minute number	
Background Papers	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No

Officer/Councillor Approval

With regard to officer approval all reports must be approved by the report authors relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).

Officer Approval	Date	Name
Chief Executive	28.1.11	Chris Elliott
CMT	28.1.11	
Deputy Chief Exec	28.1.11	Bill Hunt
Section 151 Officer	28.1.11	Mike Snow
Legal	13.1.11	Max Howarth
Finance	28.1.11	Mike Snow
Portfolio Holder(s)	28.1.11	Cllr Michael Coker

Consultation Undertaken

Final Decision?	Yes

1. SUMMARY

- 1.1 In April 2008 the Council approved its Occupational Health & Safety Enforcement Policy. This a document required by the Health & Safety Executive to govern the criteria by which the Council's Environmental Health Practitioners decide on their most appropriate courses of formal action. It is a means by which the Council demonstrates its openness and transparency in enforcing the legislation in respect of the businesses for which it has responsibility under the Health & Safety at Work etc Act 1974.
- 1.2 This Report asks the Executive to agree the outcome of a review of the policy.

2. RECOMMENDATION

- 2.1 That the recommended amended policy annexed to this Report be agreed.

3. REASONS FOR THE RECOMMENDATIONS

- 3.1 It is timely for the policy to be reviewed given that a new operating framework for health and safety enforcement has been imposed on local authorities and must be in place by April 2011.
- 3.2 A recent unsuccessful challenge in Court, concerning the way in which the policy had been applied to the case, also prompted a review. Essentially, the criteria for deciding whether or not a prosecution is warranted have been more clearly spelled out.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Policy could be left as it is but with the risk that similar defence challenges are successful.

5. BUDGETARY FRAMEWORK

- 5.1 There are no additional budgetary implications.

6. POLICY FRAMEWORK

- 6.1 The Council's aim is to deliver quality environmental services.
- 6.2 Openness and transparency are core Council values.

7. BACKGROUND

- 7.1 The HSE prescribes that every enforcement authority (EA) shall
 - use interventions, including enforcement action, in accordance with their enforcement policy and within the principles of proportionality, accountability, consistency, transparency and targeting.
 - have an enforcement policy that follows the HSC Enforcement Policy Statement
 - review their enforcement policy from time to time in consultation with their stakeholders (including partners, other EAs, employers, employees and their representatives)

- ensure that the enforcement policy is formally endorsed by the enforcing authority
- make the enforcement policy available to the public and to duty holders

7.2 A review in consultation with stakeholders will be carried out in due course.

Appendix

WARWICK DISTRICT COUNCIL (‘The authority’)

OCCUPATIONAL SAFETY & HEALTH ENFORCEMENT POLICY

AS AMENDED DECEMBER 2010

1. **BACKGROUND**
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1. BACKGROUND

The Health and Safety System

The Health & Safety Executive makes such arrangements as it considers appropriate to fulfil the purposes of the Health & Safety at Work etc Act.

2. INTRODUCTION

Local authorities have statutory responsibilities to make adequate arrangements for the enforcement of health and safety law in relation to specified work activities- including offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises. Health and Safety Executive (HSE) inspectors also enforce health and safety law in workplaces allocated to them.

This Enforcement Policy Statement sets out the general principles and approach which HSE expects the authority to follow. All inspectors are required to follow this Enforcement Policy, within the terms of their respective authorisations. See [‘Indemnification of Inspectors’](#).

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator’s Compliance Code.

In certain instances we may conclude that a provision in 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.

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 health, safety and welfare. In allocating resources, enforcing authorities should have regard to the principles set out below, the objectives published in the HSE/Local Authority Enforcement Liaison Committee's (HELA) strategic plans, and the need to maintain a balance between enforcement and other activities, including inspection.

3. POLICY STATEMENT ON ENFORCEMENT

Human Rights Act 1998 and Regulation of Investigatory Powers Act 2000 (RIPA)

All enforcement activity will be undertaken with due regard to the provisions of the above legislation, which derives from the European Convention on Human Rights especially:

- Article 6 – the right to a fair trial
- Article 8 – the right to respect for private and family life.
- Article 1 of the First Protocol – the protection of property.
- RIPA – the written authorisation of covert human intelligence sources and/or surveillance techniques

These articles confer rights on an individual; for example it confers a right of respect for a person's home, other land and business assets.

However, the Council's use of enforcement powers under the Health and Safety at Work etc Act is a justified interference with these rights if it is in accordance with the law, in the public interest and proportionate to the objective of remedying the breach of health and safety.

All officers undertaking enforcement duties will ensure that all recipients of the service receive fair and equitable treatment irrespective of their race, ethnicity, gender or disability. We will provide accessible information and advice in plain language on the legislation that we enforce.

The purpose and method of enforcement

The ultimate purpose of the enforcing authorities 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 enforcing authorities and those on whom the law places duties (employers, the self-employed, employees and others).

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 in the circumstances set out later in this policy.

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 authority has a range of tools at its disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Inspectors may offer duty holders information, and advice, both face to face and in writing. This may include warning a duty holder that in the opinion of the inspector, they are failing to comply with the law. Where appropriate, inspectors may also serve improvement and prohibition notices, withdraw approvals, vary licence conditions or exemptions, issue simple cautions, and they may prosecute.

Where circumstances (See Section 10) and the evidence warrant it the authority may prosecute without prior warning or recourse to alternative sanctions.

Giving information and advice, and issuing improvement or prohibition notices are the main means which inspectors use to achieve the broad aim of dealing with serious risks, securing compliance with health and safety law and preventing harm. A prohibition notice stops work in order to prevent serious personal injury.

Every improvement notice contains a statement that in the opinion of an inspector an offence has been committed. Improvement and prohibition notices, and written advice, may be used in court proceedings. Prosecution and, if appropriate, simple cautions are important ways to bring dutyholders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, the authority will use one of these measures in addition to issuing an improvement or prohibition notice.

4. THE PRINCIPLES OF ENFORCEMENT

Enforcement of health and safety law 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 the regulator operates and what those regulated may expect; and **accountability** for the regulator's actions. These principles will apply both to enforcement in particular cases and to the management of enforcement activities as a whole.

Proportionality

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 enforcing authorities to achieve compliance or bring duty holders to account for non-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 from a breach of the law.

In practice, applying the principle of proportionality means that particular account will be taken of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

Some health and safety duties are specific and absolute. Others require action so far as is reasonably practicable. The principle of proportionality in relation to both kinds of duty will be applied.

In this policy, 'risk' (where the term is used alone) is defined broadly to include a source of possible harm, the likelihood of that harm occurring, and the severity of any harm.

Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where duty holders must control risks so far as is reasonably practicable, inspectors considering protective measures taken by duty holders will 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.

It will be expected that relevant good practice is followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires duty holders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.

Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences.

Targeting

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, manufacturers, suppliers, or others.

Systems are in place for deciding which inspections, investigations or other regulatory contacts will take priority according to the nature and extent of risks posed by a duty holder's operations. The duty holder's management competence is important, because 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. Certain very high hazard sites will receive regular inspections so that enforcing authorities can give public assurance that such risks are properly controlled.

Any enforcement action will be directed against duty holders responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves.

Where several duty holders have responsibilities, action may be taken against more than one when it is appropriate to do so in accordance with this policy.

When inspectors issue improvement or prohibition notices, withdraw approvals, vary licence conditions or exemptions, issue formal cautions or prosecute, a senior officer of the duty holder concerned, at board level, will be notified.

Consistency

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 enforcing authorities in the advice tendered, the use of enforcement notices, approvals etc, decisions on whether to prosecute, and in the response to incidents.

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. The authority has arrangements in place to promote consistency in the exercise of discretion, including arrangements for liaison with other enforcing authorities.

Transparency

Transparency means helping duty holders to understand what is expected of them and what they should expect from the enforcing authorities. 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.

Transparency also involves the enforcing authorities in having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements must have regard to legal constraints and requirements.

This statement sets out the general policy framework within which the authority operates. Duty holders, employees, their representatives and others also need to know what to expect when an inspector calls and what rights of complaint are open to them. The leaflet *What to expect when a health and safety inspector calls* will be available for those they visit.

This 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, inspectors will tell the duty holder what to do to comply with the law, and explain why. Inspectors will, if asked, write to confirm any advice, and to 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 that in the inspector's opinion a breach of the law has been committed;
- in the case of a prohibition notice the notice will explain why the prohibition is necessary.

Accountability

Regulators are accountable to the public for their actions. This means that enforcing authorities must have policies and standards (such as the four enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

The authority has a complaints procedure in the case of decisions by officials, or if procedures have not been followed.

There is a right of appeal to an Employment Tribunal in the case of statutory notices.

5. APPROVED CODES OF PRACTICE (ACOPS)

Sometimes the law is prescriptive - spelling out in detail what must be done. However, 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. If someone is prosecuted for a breach of health and safety law and did not follow the relevant provisions of an ACOP, then the onus is on them to show that they complied with the law in another way. Advice is also contained in other HSE and [HELA](#) guidance material describing good practice. Following this guidance is not compulsory, but doing so is normally enough to comply with the law. Neither ACOPs nor guidance material are in terms which necessarily fit every case. 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. More is said about these matters in this statement.

HSE expects enforcing authorities to use discretion in deciding when to investigate or what enforcement action may be appropriate. **The decision-making process which inspectors will follow when deciding on enforcement action will be set down in writing, and made publicly available.** The judgments will be made in accordance with the principles of Philip Hampton's report *Reducing administrative burdens: Effective Inspection and Enforcement*.¹ These in turn are in accordance with the [Enforcement Concordat](#) agreed between the Cabinet, Home Office and local authority associations.

6. REGULATORS' COMPLIANCE

Risk assessment

Comprehensive risk assessment will be used to concentrate resources on the areas that need them most.

Advice, data gathering, inspection and enforcement activities, will be based on thorough and open assessments of risk. Risk assessment will be carried out on a sectoral basis where the evidence shows risks are generally low and on a company-specific basis in cases where the evidence shows risks are high.

'Open' risk assessment means that regulators must allow businesses and others to scrutinise and be consulted on risk assessment methodologies. The authority will work with other relevant regulators in the design of their risk methodologies, to simplify and reduce information requirements and inspection programmes as much as possible. The authority will seek to maximise consistency of assessment and interpretation within its own organisation, and across the regulatory sector.

Risk assessment methodologies will:

- assess and balance the likelihood of compliance failure, the seriousness of compliance failure, the business's past performance and its current practice;
- Use all relevant, good-quality data that can be readily obtained, including that available from third parties such as independent accreditation schemes
- Not use any irrelevant, inaccurate or unreliable data
- Be reviewed regularly

¹ Listed in box 2.2 of that report

Inspection

No inspection will take place without a reason and there will be no routine inspection.

Risk assessment will be used to programme all inspection activity and an element of random inspection will be used in the programme to test the risk assessment methodologies.

Inspectors will focus the greatest inspection effort on businesses where risk assessment shows that:

- A compliance breach would have serious consequences; and
- The individual business is at high risk of a compliance breach.

Businesses will not be inspected where hazards are, or the risk of adverse outcomes is, low, except as part of the random element of their inspection programme.

Where possible, regulators will draw up their inspection programmes alongside other regulators, and minimise burdens on business through coordinated inspections and data sharing.

Data requirements

Businesses should not have to give unnecessary information, nor give the same piece of information twice.

Inspectors will assess the information they require on the basis of risk, working with others to ensure that requested information is not available from any other source. Data will be shared between authorities.

The authority will involve business in vetting data requirements and form design, and will follow relevant guidance on better forms.

Handling suspected breaches

Businesses that persistently break legislation will be identified quickly, and face proportionate and meaningful sanctions.

Inspectors will work constructively with businesses that are honestly trying to comply with the law, and help them towards compliance.

When possible breaches are identified, either by the inspector or the business, inspectors will act in a way proportionate to the risks as they understand them. Except in cases where immediate action is necessary, inspectors will provide an opportunity for the party in suspected breach to discuss the circumstances of the case and try to resolve the breach. Where immediate action is considered necessary,

reasons for the action will be given at the time and confirmed in writing at the earliest opportunity.

When assessing options for penalising businesses, the authority will ensure that the penalty route proposed is proportionate to the offence, the outcome, and the culpability of the offender.

Advice

The authority will provide authoritative, accessible advice easily and cheaply.

Advice services will:

- provide consistent statements about regulatory requirements and good practice on which businesses can rely;
- distinguish clearly between legal requirements and best practice guidance;
- provide confirmation of advice in writing if requested;
- provide advice in a range of formats and media so all businesses can easily access advice that meets their specific needs;
- be provided in a way that takes account of the needs of minority groups and smaller businesses and owner/operators.

The authority will involve businesses in developing both the content and style of advice and the formats for transmitting it.

Supporting economic progress

The authority recognises that a key element of its activity is to allow, and encourage, economic progress and only to intervene when there is a clear case for protection.

The authority will not:

- create unnecessary administrative burdens
- reduce incentives to innovate
- discriminate between small and large businesses
- discriminate between companies already in particular markets, and companies who might want to enter.

Accountability

The authority will be accountable for the efficiency and effectiveness of its activities, while remaining independent in the decisions it takes.

The authority will, in consultation with business and other interested parties, draw up and publish clear standards for service and performance. Performance will be measured against the standards each year, and results will be published.

When talking to dutyholders, staff will identify themselves by name, and will provide a telephone number or contact point for further dealings with their organisation.

The authority will maintain complaints procedures that are easily accessible to business, the public, employees and consumer groups. Complaints procedures will have a final stage that allows referral to the Local Government Ombudsman. The

authority will publicise these procedures, and also any other rights of further complaint or appeal, with details of the process and likely timescale.

7. INVESTIGATION

Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, regard will be had to the principles of enforcement set out in this statement.

All investigations will be carried out in accordance with, and having regard to, the Police and Criminal Evidence Act 1984 Codes of Practice, the [Criminal Justice Act 1988](#), the [Criminal Justice and Public Order Act 1994](#), the [Criminal Procedures and Investigations Act 1996](#), the [Magistrates' Courts \(Advance Notice of Expert Evidence\) Rules 1997](#), the [Human Rights Act 1998](#), the [Regulation of Investigatory Powers Act 2000](#), the Health & Safety at Work etc Act 1974 (HASWA) and any associated Statutory Instruments.

Activities and resources are targeted via the Service Plan. In particular, in allocating resources, a balance will be struck between investigations and mainly preventive activity. The following factors will be considered in evaluating cases of ill health and accidents:

- 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.

To maintain a proportionate response, most resources available for investigation of incidents 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 noncompliance with the law which are uncovered in the course of preventive inspection, or in the investigation of reported events.

Inspectors will carry out a site investigation of a reportable work-related death, unless it is an instance of adult trespass or there are other specific reasons for not doing so, in which case those reasons will be recorded.

In selecting which complaints or reports of injury or occupational ill health to investigate and in deciding the level of resources to be used, inspectors 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.

Where appropriate, inspectors will serve Improvement and Prohibition Notices, withdraw approvals, vary licence conditions or exemptions, issue formal cautions, and prosecute.

When investigating a complaint received from persons at work, members of the public, organisations or those made anonymously, inspectors will avoid revealing to the employer or his representative that a complaint has been made, unless the complainant has agreed otherwise. Care will also be taken when conducting an enquiry that the identity of the complainant is not revealed.

8. NOTICES

Giving information and advice, issuing Improvement or Prohibition Notices, and withdrawal or variation of licences or other authorisations are the main means which inspectors use to achieve the broad aim of dealing with serious risks, securing compliance with health and safety law and preventing harm. A Prohibition Notice stops work in order to prevent serious personal injury. Information on Improvement and Prohibition Notices will be made publicly available.

Every Improvement Notice contains a statement that in the opinion of an inspector an offence has been committed, and is properly framed in terms of the principles of proportionality, targeting, consistency, transparency and accountability. **As such, Improvement Notices will be the first option used by inspectors to secure remedial action to deal with offences where a letter or verbal advice is unlikely to secure the objectives intended.** Improvement and Prohibition Notices, and written advice, may be used in court proceedings.

An Improvement Notice will be issued only when the enforcement officer thinks that there is a contravention of one of the relevant statutory provisions at the time of the visit or that there has been such a contravention and that it is likely that the contravention will continue or be repeated. Prohibition Notices will be issued to have immediate or deferred effect. The notice will be served only if the enforcement officer thinks that there is, or will be, a risk of serious personal injury. There does not have to be a breach of any statutory requirement before a prohibition notice is issued but an officer who thinks there has been will specify it in the prohibition notice.

The issue of choice may arise where it is necessary to provide something, eg a guard, or a safe system of work. The notice procedure can have an immediate impact, whereas a prosecution may not be resolved for several months. On the other hand, in the long term, the notice procedure alone may prove ineffective if a person knows that the only consequence of an unsafe practice such as failure to keep floors unobstructed, or free from substances likely to cause persons to slip, will be a requirement for them to do something which they should have done in the first place.

9. SIMPLE CAUTIONS

Simple cautions and prosecution are important ways to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy, one of these measures will be used in addition to issuing an Improvement or Prohibition Notice. See [Home Office Circular 30/2005](#).

A Simple Caution (known as a formal caution in previous Home Office Circulars, now renamed to distinguish it from a Conditional Caution) is a non-statutory disposal for adult offenders. It may be used for cases involving first time, low level offences where the public interest can be met by a Simple Caution. The accurate recording of cautions can contribute to improved public confidence in the criminal justice system and also contributes towards reducing the likelihood of re-offending. With the introduction of the statutory charging scheme, decisions to issue Simple Cautions must be made in accordance with the [Director of Public Prosecutions' Guidance on Charging \(the Director's Guidance\)](#).

A [simple \(formerly 'formal'\) caution](#) is a statement by an inspector that is accepted in writing by the duty holder, that the duty holder has committed an offence for which there is a realistic prospect of conviction. A formal caution may only be used where a prosecution could be properly brought. 'Formal cautions' are entirely distinct from a caution given under the Police and Criminal Evidence Act by an inspector before questioning a suspect about an alleged offence.

10. PROSECUTION

Section 38 of HASWA states that proceedings for an offence under any of the relevant statutory provisions shall not, in England and Wales, be instituted except by an inspector or by or with the consent of the Director of Public Prosecutions. The decision to proceed with a court case rests with the authority, in accordance with its Scheme of Delegations.

The decision whether to prosecute will take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution may 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.

While the primary purpose of the authority is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement. Where in the course of an investigation an inspector 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 will go ahead. Where the circumstances warrant it and the evidence to support a case is available, the authority may prosecute without prior warning or recourse to alternative sanctions.

The authority will consider prosecution, or consider recommending prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply:

- 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 non-compliance with an appropriate licence;

- a dutyholder'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 simple 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.

Prosecution of individuals

Subject to the above, the authority will identify and prosecute or recommend prosecution of individuals if it considers that a prosecution is warranted. In particular, inspectors 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 authority will seek disqualification of directors under the Company Directors Disqualification Act 1986.

Publicity

The authority will make arrangements for the publication of the names of all the companies and individuals who have been convicted of breaking health and safety law. Arrangements are made for making publicly available information on these convictions and on improvement and prohibition notices which they have issued.

The authority will in all cases draw media attention to factual information about charges which have been laid before the courts, and care will be taken to avoid any publicity which could prejudice a fair trial. 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, will be publicised.

Action by the courts

Health and safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences. Unlimited fines may be imposed by higher courts. The authority will continue to seek to raise the courts' awareness of the gravity of health and safety offences and of the full extent of their sentencing powers, while recognising that it is for the courts to decide whether or not someone is guilty and what penalty if any to impose on conviction.

The authority will, when appropriate, 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). The Lord Chancellor has said that someone injured by a breach of health and safety legislation is no less a victim than someone who is assaulted.

Representations to the courts

In cases of sufficient seriousness, and when given the opportunity, the authority 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 authority 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*'.

11. DEATH AT WORK

Where there has been a breach of the law leading to a work-related death, the authority will consider whether the circumstances of the case might justify a charge of manslaughter.

In England and Wales, to ensure decisions on investigation and prosecution are closely coordinated following a work-related death, HSE, the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS) have jointly agreed and published [Work-related deaths: A protocol for liaison](#). The authority will take account of the protocol when responding to work-related deaths.

50 The police are responsible for deciding whether to pursue a manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges. The enforcing authorities are responsible for investigating possible health and safety offences. If in the course of their health and safety investigation, inspectors find evidence suggesting manslaughter, they will pass it on to the police. If the police or the CPS decide not to pursue a manslaughter case, the enforcing authorities will normally bring a health and safety prosecution in accordance with this policy.

12. INDEMNIFICATION OF INSPECTORS

Section 26 of the Health and Safety at Work etc Act 1974 allows Local Authorities to indemnify inspectors appointed under that Act under specified circumstances. It is the policy of this Authority to indemnify inspectors appointed under that Act against the whole of any damages and costs or expenses which may be involved, if the Authority is satisfied that the inspector honestly believed that the act complained of was within his/her powers and that his/her duty as an inspector required or entitled him/her to do it, and provided the inspector was not wilfully acting against instructions.

13. GENERAL

This policy makes provision for:

- the particular interests of consumers within the authority's area including business owners, employees and the public by seeking their feedback on the services received

- targeted educational and information programmes
- compliance, monitoring, and corrective action

within a service plan and a quality management system through internal and external audit.

The authority has mechanisms in place to consult stakeholders affected by their service regarding the development of the enforcement policy, including dutyholder questionnaires.