

East Cambridgeshire District Council

HEALTH AND SAFETY ENFORCEMENT POLICY STATEMENT

September 2011

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Appendices

Appendix A - Glossary

Copies of the policy can be provided in an alternative format. Please contact East Cambridgeshire District Council on 01353 665555 to request the format you require, or alternatively write in to Environmental Services, East Cambridgeshire District Council, The Grange, Nutholt Lane, Ely, CB7 4EE or email customerservices@eastcambs.gov.uk

East Cambridgeshire District Council

HEALTH AND SAFETY ENFORCEMENT POLICY STATEMENT

1. INTRODUCTION

- 1.1 The purpose of this policy statement is to express the commitment and intentions of East Cambridgeshire District Council (“the Council”) to the principles of consistent and effective enforcement of health and safety legislation. The Council through its authorised officers will also take into account any enforcement guidance issued from time to time by the Health and Safety Executive and Health and Safety Executive Local Authority Liaison Committee (HELA).
- 1.2 This policy is designed to set out the arrangements by which the principles of proportionality, consistency, transparency, helpfulness, openness, accountability and targeting of resources will be incorporated into actions.
- 1.3 The officers who carry out the enforcement of health and safety legislation are Council staff or contractors who are authorised in writing to enforce specific tasks and duties in accordance with the Council’s scheme of delegation. In some instances, external consultants may be authorised to enforce such powers and duties on behalf of the Council. All authorised officers will be appropriately trained and experienced for the duties that they are asked to perform. Promotion of consistency and competency of staff will be ensured through annual reviews of performance and appraisals and the implementation of recognised training needs. Peer review and monitoring will be also implemented on an annual basis.
- 1.4 Where chemical or biological contamination etc. poses a potential health and safety concern, officers will, where appropriate, seek medical or other expert advice from organisations such as the Public Analyst, Health Protection Agency (HPA), and Employment and Medical Advisory Service (EMAS).

2. STATEMENT OF INTENT

- 2.1 It is the Council's policy to strive to ensure that the risks to peoples’ health and safety from work activities (for which it is the enforcing authority) within the District are properly controlled and managed, in order to reduce risks associated with work to the lowest level which is reasonable practicable.
- 2.2 When considering the appropriate course of action to be taken following an inspection or visit, this Policy must be read in conjunction with relevant guidance on enforcement action produced by bodies such as the HSE, HELA and the Chartered Institute of Environmental Health (CIEH).
- 2.3 All officers, when making enforcement decisions, must abide by this Policy. They must also have regard to, and follow as appropriate, relevant Service operating procedures.
- 2.4 In the first instance, officers will usually adopt an educative approach to those responsible for securing compliance with relevant health and safety legislation (the duty holders). In the second instance, officers will enforce the law by using a range of enforcement options including: verbal and written warnings, use of statutory notices, simple cautions and prosecution. Prosecution will not normally constitute a punitive response to very minor contraventions of health and safety legislation.
- 2.5 This policy recognises and gives support to the specific guidelines and enforcement action contained in Approved Codes of Practice (ACOPs) and guidance issued by those bodies listed in paragraph 2.2 above and supports the “Primary Authority” principle (see Glossary, page 18).

- 2.6 It is expected that departures from these policy guidelines will be rare and only following consideration by Principal Environmental Health Officer in consultation with the Head of Environmental Services. Where appropriate, liaison will take place with other enforcement agencies where there may be a common interest and/or to clarify enforcement responsibility or interpretation.
- 2.7 In enforcing health and safety legislation, the Council will strive to fulfil the relevant HSE/HELA objectives to reduce risks to health and to protect people. The Council will also strive to implement HSE/HELA aims and priority programmes while having regard to their current strategy statements.

3. GENERAL PRINCIPLES

- 3.1 Much of modern health and safety law is goal setting and specifies what must be achieved as opposed to what must be done. Guidance on how to achieve these goals is often set out in Approved Codes of Practice (ACOPs) and there is also a wide variety of advisory material describing good practice. Neither ACOPs nor guidance material are written in terms which necessarily fit every case. In considering whether good practice has been adopted, officers will need to take relevant ACOPs and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to control them.
- 3.2 Sometimes the law is very specific, spelling out in detail what must be done. For example, a risk assessment must be carried out in relation to all risks at work. Prescriptive law limits the discretion available to the duty holder and also the officer who enforces it.
- 3.3 This Council believes that the enforcement of health and safety law should be informed by the principles of *proportionality* in applying the law and securing compliance; *consistency* of approach, *targeting* of enforcement action and *transparency* about how it operates and what those regulated may expect from it.

4. PRINCIPLES OF ENFORCEMENT

The enforcement of health and safety legislation should be guided by the principles that are contained within the Government's Enforcement Concordat, the Regulators Compliance Code and Crown prosecutors Code. The Enforcement Concordat has been formally adopted by the Council. This constitutes a framework for local authorities to work to by committing them to good enforcement policies and procedures. The principles are as follows:

4.1 Standards

The Council remains accountable to central government, the HSE and local taxpayer for its actions and omissions. This means that it must have clear policies and standards against which it can be judged. The Council will consult with business and other relevant interested parties, including technical experts where appropriate and draw up these standards setting out the level of service and performance the public and business can expect to receive. These standards will then be made available to those who are regulated.

4.2 Openness

The Council will provide information and advice in plain language on the law that it enforces and will disseminate this as widely as possible. It will also be open about how it sets about its work, including any charges that are made for specific activities. Officers will be prepared to discuss general issues, specific compliance failures or problems with duty holders, employees and their representatives.

4.3 Helpfulness

The Council believes that prevention is better than cure and that its role therefore involves actively working with business, especially small and medium sized businesses, to advise and assist on compliance. It will provide a courteous and efficient service and the staff will identify themselves by name. Officers will provide a contact point and telephone number for further dealings with the Council and will encourage business to seek advice/information from them. Applications for, registrations, etc, will be dealt with efficiently and promptly. The Council will ensure that, wherever practicable, its enforcement services are effectively co-ordinated to minimise any unnecessary overlaps and time delays.

4.4 Complaints about Service

The Council will make readily available the departmental procedure for dealing with complaints made against it or its officers. This will be available to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any rights of appeal or address will be explained by the officer, along with details of the process and the time-scales involved.

4.5 Proportionality

4.5.1 Proportionality means relating enforcement action to the risks. Those whom the law protects and duty holders expect that action taken by the Council to achieve compliance should be proportionate to any risks to health and safety and to the seriousness of any breach.

4.5.2 Some health and safety duties are specific and mandatory while others require individual interpretation. In general, the concept of proportionality is built into the regulatory system through the principle of 'so far as is reasonably practicable'. Deciding what is reasonably practicable to control risks involves the exercise of judgement by duty holders and discretion by enforcers.

4.5.3 When duty holders and the enforcing officer cannot reach agreement, final decisions on what is reasonably practicable where formal enforcement action is taken is made by the courts or Employment Tribunals (on appeal). In informal situations, the duty holder may contact the PEHO for an informal discussion on an interpretation issue.

4.5.4 Where the law requires that risks should be controlled 'so far as is reasonably practicable'; officers should consider the measures taken and balance these against the likely cost and degree of risk. Officers may legitimately expect that relevant good practice will be followed.

4.6 Consistency

4.6.1 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

4.6.2 Duty holders managing similar risks expect consistency from the Council. This includes any advice that is given, the use of enforcement notices, decisions on prosecution and in the response to accidents at work.

4.6.3 The Council recognises that in practice consistency is not a simple matter. Officers are faced with many variables: the level of hazard, the attitude and competence of management, and the compliance history may vary between companies that may otherwise appear similar. The decision on the type of enforcement action is a matter of judgement and the officer must exercise discretion. This Council will have arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

4.7 Transparency

4.7.1 Transparency means helping duty holders to understand what is expected of them and what they should expect from the Council. 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 legal requirements and advice or guidance about what is desirable but not compulsory.

4.7.2 This statement sets out the general policy framework, which this Council should comply with. Duty holders need to know what to expect when an officer calls and what rights of complaint are open to them. This will be achieved in a number of ways including: -

- Issuing the HSE guidance entitled "Your Rights When Health and Safety Inspectors Take Action", and "What to Expect When a Health and Safety Inspector Calls," and
- The following of internal Service standard operating procedures on enforcement action.

4.8 Targeting

4.8.1 Targeting means making sure that enforcement actions are targeted primarily on those whose activities give rise to the most serious risks in accordance with the relevant HSE/HELA guidance or where the hazards are least well controlled. Action should be focused on the duty holders who are responsible for the risk and those who are best placed to control it.

4.8.2 The Council has systems in place for prioritising inspections according to the risks posed by a duty holder's operations; and that they will take account of hazards and the nature and extent of risks. Management competence is important, because a relatively low hazard site poorly managed can entail greater risk to its workforce or the public than a higher hazard site where risk-control measures are in place.

4.8.3 When formal enforcement action is necessary, the person responsible for creating a risk should be held to account for it. Where several duty holders share a responsibility, the Council may take action against those who can be regarded as primarily in breach.

5. SPECIFIC ENFORCEMENT AREAS

5.1 Routine inspections

5.1.1 Inspections and visits to premises and work activities may be made without prior warning. In instances where it is appropriate to do so, appointments may be advisable e.g. where it is prudent that the duty holder or manager is on site in order to discuss particular issues or matters arising from a previous visit.

5.1.2 Officers will normally identify themselves at the outset unless for justifiable reasons this will defeat the object of the visit e.g. the visit is for surveillance purposes. In any event, officers will show their identification, , and provide means of checking that identity if necessary.

5.1.3 The officer will state the purpose of the inspection at the start of the visit with the person in charge at that time. Inspections and visits can involve discussions with all or some of the employees and contractors working at the premises at that time. At the conclusion of all programmed inspections, the officer will offer to discuss their findings with the employees and their representatives, and give to the person in charge a completed Report of Inspection form (see paragraph 5.1.5 below).

5.1.4 Officers will offer to supply any relevant leaflets or guidance notes at the time of inspection if they have them or send them later. Letters can be translated into other languages if requested and interpreters can be arranged where necessary. Where issues of interpretation or inconsistency arise, the authority will liaise with the Primary Authority, if appropriate, or other authorities in the County or the Health and Safety Executive (HSE).

5.1.5 Inspection reports should be issued following all programmed inspections. This applies even in those circumstances where conditions at the time of inspection are satisfactory. The minimum details which must be included in post inspection reports include: date and time of inspection, address of the premises, persons seen/interviewed, any items requiring attention and a summary of action to be taken by the officer.

- 5.1.6** If contraventions are found and where resources permit, the Council will arrange for a further visit to be carried out prior to the next inspection. In any event, revisits will be made to ensure that significant breaches have been remedied and to follow-up formal notices once they have expired.

5.2 Investigations

- 5.2.1** The Council will respond to, and where appropriate, carry out initial actions into complaints about health and safety at work within 3 working days. The response may vary according to the nature of the allegation and its seriousness. In some instances, it may be necessary to protect the identity of the complainant e.g. where that person is an employee or where there is a risk of intimidation.
- 5.2.2** The Council will respond to statutorily reportable accidents at work. The response type may vary according to the nature of the accident, and whether or not it has been reported in accordance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). In the case of serious accidents or incidents, including fatalities or where the problem may be of a serious ongoing nature, this will be on the same day.
- 5.2.3** In responding to complaints, the investigating officer will liaise, where necessary, with the Primary Authority. The complainant shall be kept informed of the progress of the investigation and notified of the eventual outcome.
- 5.2.4** Where complaints about working conditions or reports of accidents have been received, the duty holder shall be notified as soon as is reasonably practicable unless it is not appropriate to do so e.g. it might hinder a more serious on-going problem subject to a separate investigation or where there may be repercussions for an employee who is involved or has complained.

The investigating officer will keep the duty holder or their representative, complainant or accident victim informed of the progress of the investigation. At the end of the investigation, all interested parties will be informed of the outcome and any further action to be taken by the Council.

- 5.2.5** The authority has opportunity on some limited occasions to control activities such as skin piercing via registrations. The authority will seek to use these "permissioning" regimes to proactively regulate appropriate safety standards. The authority will from time to time monitor compliance and where appropriate enforce compliance. The protocol for enforcement will depend on the nature of the specific permissioning regime.

5.3 Other Intervention Strategies

- 5.3.1** Guidance contained within the HELA Circular LAC 67/2 (Rev 2) requires Local Authorities to give priority to inspect the highest hazard/risk premises for health and safety.
- 5.3.2** For those premises falling within risk categories B2 and C premises (low risk) which are not included within any proactive or programme directed work are likely to be subject to being monitored through accident reports, invited to any seminars or awareness days, or sent self assessment questionnaires, in addition to the provision of information or mail shots specific to particular risks associated with the main work activity. This is in line with HELA Circular LAC 67/2 (Rev 2)
- 5.3.3** A review of the appropriateness of Category C risk premises will be carried out from time to time by the Council and a planned, programmed inspection will be carried out where there is a reconsideration of the risks associated with the activity.

- 5.3.6** On receipt of a completed self-assessment questionnaire, an assessment whether to carry out an inspection will be made. Factors that may result in a planned inspection being carried out are for example, a change in operation, an increase in the number of staff or an indication that health and safety compliance is low.

5.4 Partnership working with the Health and Safety Executive.

- 5.4.2** The Council is committed to work in partnership with the HSE, and as such has signed up to the Flexible Warrant Scheme. Flexible warrants allow local authority and HSE inspectors as co-regulators to legally work across boundaries. It also enables joint working arrangements to improve health and safety outcomes by targeting resources to risk. Section 18 Guidance issued to Local Authorities and the Health and Safety Executive promotes Partnership Working, which can include activities, such as joint inspections and awareness campaigns, from which informal and formal enforcement action may result.

6. ENFORCEMENT OPTIONS

- 6.1** Generally, enforcement will be undertaken in a graduated approach. There are a number of enforcement options available to authorised officers where they have identified contraventions of the law. The over riding principle of enforcement is to reduce risk ratings. Enforcement options include: -

- taking informal action;
- using statutory notices e.g. Improvement, Prohibition;
- using simple cautions;
- prosecution.

- 6.2** This part of this policy provides detailed guidance on when each of these options may be considered. In each situation, the officer will need to assess the degree of risk, the seriousness of the offence and the technical means of remedying the situation along with the history of compliance. The decision as to which type of enforcement action is appropriate must always be governed by the particular circumstances of the case. Where appropriate, a staged approach to enforcement should be adopted. In the first instance, businesses should be given the opportunity to discuss and remedy problems before any formal action is taken (unless it is of a serious nature and requires immediate action).

6.3 Informal Action

- 6.3.1** Informal action may consist of any or all of the following:

giving advice and offering general assistance and guidance;
issuing verbal warnings of contraventions;
writing a letter requiring action.

- 6.3.2** Officers will use informal procedures as long as they believe these will secure compliance with the law within a time scale that is reasonable in the circumstances.

- 6.3.3** If the officer decides to use informal methods such as giving written advice, then this should not produce a lower standard of compliance with the Act and ancillary legislation than would be achieved by the use of formal legal procedures.

- 6.3.4** While the action taken by the officer will depend on the circumstances of the particular case, for guidance purposes only, the Council considers the following circumstances where it may be appropriate to take informal action:-

- the offence is not serious enough to warrant formal action e.g. a minor technical offence which creates little or no risk to health and safety;

- from the past history, it can reasonably be expected that informal action will achieve compliance;
- confidence in the business management involved is reasonably high.

6.3.5 Where informal action has already been adopted in relation to the same proprietor, but without success, officers will consider using a more formal approach. The options may include the serving of an Improvement Notice or prosecution.

6.3.6 Where an officer offers advice following an inspection, then they should be prepared to confirm that advice in writing with a copy being enclosed for the employees and / or their representatives. Copies of letters will be sent to the registered or Head Office where this is not the premises visited.

6.3.7 All letters sent to duty holders following inspections will distinguish a legal requirement from a recommendation, give a time for compliance and state the legislation being contravened. It will also give the contact details for the officer and where to write in if there are any queries. Informal post inspection letters will be sent out, where possible, within 10 working days of the inspection. Copies will also be enclosed for the attention of employees.

6.4 Improvement Notices

6.4.1 Officers will normally consider issuing Improvement Notices in the following circumstances:

- where there are significant contraventions of legislation;
- where formal action is proportionate to the risks to the health and safety of employees or others;
- where there is a record of non-compliance with informal action for breaches of the Health and Safety at Work etc. Act 1974, ancillary legislation, and regulations made under it;
- where the authorised officer has reason to believe that an informal approach will not be successful;
- where health and safety standards are generally poor with little management awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to the health and safety of employees or others;
- 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.

6.4.2 Before issuing a notice officers will consider all the relevant guidance in codes of practice and any relevant advice issued by the , HSE, HELA and CIEH.

6.4.3 Failure to comply with an Improvement Notice will normally result in prosecution. In deciding whether a prosecution shall follow, consideration shall be given to the following:

- any explanation consequently offered by the recipient;
- the nature and extent of any work that has been carried out as well the likely completion time for the remainder of the work;
- what proportion, if any, of the works have been completed, and whether the outstanding works pose a risk to health and safety;
- whether other action, such as issuing a simple caution in accordance with the relevant Home Office circular would not be appropriate or effective.
- The Enforcement Management Model will also be consulted when making a decision as to the most appropriate course of action.

6.4.4 Where possible, officers will try and agree a reasonable time limit for compliance with an Improvement Notice with the duty holder. Once the notice has been served and the duty holder has justifiable reasons for requiring an extension for compliance, then they should make it in writing direct to the officer concerned. Any requests for extensions of time for compliance will only be considered by the officer when made before the notice expires.

Information on the appeal procedures will be enclosed with the notice. Officers will normally revisit the premises the next working day after the notice has expired to check compliance. Notices may be included on the Register of Notices for Public Viewing where appropriate.

6.5 Prohibition Notices

6.5.1 Officers will consider use of Prohibition Notices where there is a risk of serious personal injury and:-

- The consequences of not taking immediate and decisive action to protect the health and safety of employees or others would be unacceptable;
- The officer has no confidence in the duty holder that the hazard/risks will be abated without the service of such a notice.
- The Enforcement Management Model will also be consulted as to the most appropriate course of action.

6.5.2 In all cases where an officer considers that the service of a Prohibition Notice is the only course of action, the seriousness of the situation must be explained to the duty holder and/or person responsible for securing compliance with the Notice.

6.5.3 It may be appropriate in certain circumstances for the Primary Authority for the business concerned to be contacted and advised of the Prohibition Notice and its outcome. A copy of the Notice may be put in the Register of Notices for public viewing where appropriate.

6.5.4 In a situation where serious or imminent danger to the health and safety of persons at or connected with a workplace from any article or substance, action may be taken to remove that danger under Section 25 of the Health and Safety at Work etc. Act 1974 subject to the same considerations outlined in 6.5.1 above.

6.6 Simple Cautions

6.6.1 The Council may consider issuing a simple caution, in appropriate cases, as an alternative to a prosecution. In doing so, reference will be made to the appropriate Home Office circular. Under normal circumstances, the purpose of a formal caution is to:-

- deal quickly and simply with less serious offences;
- divert less serious offences away from the Courts;
- reduce the chances of repeat offences.

6.6.2 When a simple caution is under consideration, the following conditions must be fulfilled before it is given:-

- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction if a prosecution were to be taken as an alternative; and
- the suspected offender must admit the offence; and
- the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

6.6.3 Where a person declines to accept a simple caution, it will be necessary to consider taking alternative enforcement action. This could include prosecution in accordance with the Council's prosecution policy attached in Appendix A and relevant Home Office guidance.

6.7 Prosecution

Prosecution is only one of a number of enforcement options available to the Council. Each case needs to be judged on its own merits and any policy cannot therefore be prescriptive but

only broad in its nature. Further information in relation to prosecution can be found later on in this policy.

6.8 Register of Notices for Public Viewing.

The Council will make arrangements for the publication annually of the names of all the companies and individuals who have been convicted in the previous 12 months of breaking health and safety law. Information on improvement notices and prohibition notices which have been issued will also be made available for public viewing.

6.9 HEATH AND SAFETY PROSECUTION POLICY

6.9.1 Through its Standing Orders, East Cambridgeshire District Council (the Council) delegates the authority to prosecute for health and safety matters to the Head of Environmental Services (HES). There are, however, a number of individuals who will be consulted as part of the decision-making process. These are the:-

- a. Principal Environmental Health Officer (PEHO)
- b. Senior Environmental Health Officer (SEHO); and
- c. Head of Legal and Democratic Services.

6.9.2 Dependant on the case in question, the following people may also need to be consulted as appropriate:-

- a. Fully authorised health and safety enforcement officers;
- b. External professional/experts in connection with health and safety issues e.g. expert witnesses.

6.9.3 In consultation with the PEHO and where appropriate the Council's legal advisor, the officer will gather appropriate evidence and prepare the case. Where, having considered all the evidence, it is felt by the officer that a prosecution may be warranted, a recommendation will be formed that will be presented in writing to the HES for consideration and authorisation. Following the written agreement by the HES to proceed, the Council's legal service will initiate the prosecution in consultation with the case officer.

6.9.4 The Prosecution Policy

6.9.5 This part of this document outlines the prosecution policy of the Council and describes, in broad terms, the criteria and basis of taking matters before a court of law. The Council's Prosecution Policy in relation to health and safety forms part of the overall strategy for enforcement and for dealing with offences. This policy is consistent with the Enforcement Concordat agreed by central and local government to which the Council has formally signed up to. The overall enforcement strategy of the health and safety enforcement function is detailed within the remainder of this document.

6.9.6 This Council takes seriously its obligations arising from the human rights legislation. It will endeavour, at all times, to act compatibly with this legislation and give due regard to the rights of the individual.

6.9.7 It is the policy of the Council when dealing with all offences to:

- ensure uniformity, consistency and even handedness;
- specify and to observe the criteria for alternative courses of action; and
- take action which assists the prevention of potential, continuing or recurring offences of a similar nature.

6.9.8 Enforcement action ranges from giving advice and issuing informal warnings, to cautioning and prosecution. Decisions on the type of action that will be taken in relation to a particular offence are based on the following criteria:

- i) The seriousness/gravity of the alleged offence, including the following considerations:
 - the risk or harm to the health, safety and welfare of employees or others;
 - failure to comply with a statutory notice served for a significant breaches of legislation;
 - disregard of the health, safety and welfare of employees or others for financial reward.
 - The outcome of the Enforcement Management Model process.
- ii) The previous history of the party concerned, including the following considerations:
 - offences following a history of similar offences;
 - failure to respond positively to past warnings;
 - failure to comply with any formal notices.
- iii) The ability of any important witnesses and their willingness to co-operate;
- iv) The willingness of the party concerned to prevent a recurrence of the problem;
- v) The probable public benefit of a prosecution and the importance of the case - e.g. whether it may establish a legal precedent or deter others from similar failures to comply with the law; the general advice is, the graver the offence, the less likelihood there will be that the public interest will allow anything other than a prosecution;
- vi) Whether other action, such as issuing a simple caution in accordance with the relevant Home Office circular or an Improvement Notice or Prohibition Notice, would be more appropriate or effective. (It is possible to prosecute as well as issue a Notice where a risk to health and safety still exists. Failure to comply with that Notice would then become an additional offence);
- vii) Any explanation offered by the company or the suspected offender. It is always recommended that suspected offenders are invited to offer an explanation before prosecution decisions are taken and that this is done 'under caution';
- viii) If a complainant or employee is involved, the effect (financial, physical, psychological etc.) which the offence creates and their willingness, or otherwise, to cooperate with an investigation.

6.9.9 Serious offences for which prosecution would be appropriate are illustrated by the following examples:

- where there is blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it;
- when there appears to have been reckless disregard for the health and safety of employees or others;
- where there have been repeated breaches of legal requirements in an establishment, or in various branches of a multiple outlet concern, and it appears that management is neither willing nor structured to deal adequately with these;
- where a particular type of offence is prevalent in an activity or an area;
- where, as a result of a significant contravention, there has been a serious accident or a case of ill-health;
- where a particular contravention has caused serious public harm;
- where there are persistent poor standards for control of health hazards.

6.9.10 The Council recognises that most businesses wish to comply with the law. However, there are occasions when action, including prosecution, will be taken against those who have flouted the law, or acted irresponsibly. Those matters that involve intentional, repeated or reckless acts and those concerned with public safety will be considered for prosecution.

6.9.11 When considering prosecution, the Council will have regard to the Attorney General's Code for Crown Prosecutors. This means that the following criteria will be considered:

- i) Whether the standard of evidence is sufficient for there to be a realistic prospect of conviction;
- ii) Whether a prosecution is in the public interest;
- iii) The likely penalty, i.e. if the probable penalty would only be an absolute discharge then it would not normally be considered in the public interest to prosecute;
- iv) Currency, i.e. regard would be had to the time which has elapsed since the date of any alleged offence;
- vi) Youth, with regard being taken of previous character, parental attitude, and the likelihood of the alleged offence being repeated;
- vii) Old age; infirmity, or other medical condition, in particular, whether the accused is fit to stand trial.

6.9.12 Having decided to prosecute, the policy of the Council is to proceed without any unnecessary delay and to select offences that:

- i) Reflect the seriousness of the case;
- ii) Enable a court to exercise adequate sentencing powers; and
- iii) Permit the case to be presented in a clear and precise manner.

6.9.13 Once the prosecution has been determined by a court of law, the Council will contact all its witnesses to inform them of the outcome.

6.9.14 Prosecution to Ensure Prevention

In keeping with its preventative role, the Council may use prosecution as a way to draw attention to the need for compliance and the maintenance of good standards in relation to the health, safety and welfare of employees. The Council may consider prosecution if a breach has significant potential for harm, regardless of whether it caused an injury.

6.9.15 Prosecution of Individuals,

Sections 7, 36 and 37 of the Health and Safety at Work etc. Act 1974 allow for the prosecution of individuals who have committed offences under health and safety legislation. It is the Council's policy to identify and prosecute individuals if a conviction is warranted and can be secured. This may for example be appropriate where, despite adequate management controls, an employee blatantly ignores health and safety instruction and places either himself or his fellow workers in considerable danger.

6.9.16 Death at work

Where there has been a breach of the law leading to a work-related death, the Council will need to consider whether the circumstances of the case might justify a charge of Corporate or individual manslaughter. It will therefore liaise with the Police, Coroners and the Crown Prosecution Service (CPS), where necessary, and if they find evidence suggesting Corporate or individual manslaughter, pass it on to the Police or where appropriate the CPS. If the Police or the CPS decide not to pursue a Corporate or individual manslaughter case, the Council may consider prosecuting for health and safety offences if that is appropriate. In all areas of work related deaths, the HSE's Work Related Death Protocol will be referred to.

6.9.17 Encouraging action by the courts

Health and safety law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and in some cases imprisonment may be imposed by higher courts. The Council will continue to raise the courts' awareness of the gravity of health and safety offences and encourage them to make full use of their powers.

7.0 Incident Selection Policy

7.1 It is East Cambridgeshire District Council's policy to ensure that where the Council is the enforcing authority, accidents, dangerous occurrences and reportable diseases are investigated using a systematic approach which takes into account the Council's Health and Safety Enforcement Policy, and the Health and Safety Executive / Local Authorities Enforcement Liaison Committee (HELA) strategic priorities.

7.1.2 The Council will allocate sufficient time and resources for reactive work to investigate accidents, dangerous occurrences and cases of occupational ill health. However, it will not be possible, nor is it necessary, to investigate all such incidents and this policy ensures that the most serious receive appropriate attention in accordance with HSE / HELA objectives and priorities.

7.1.3 The purpose of this document is to give framework guidance to officers in deciding which accidents, dangerous occurrences and reportable diseases should be investigated.

7.2 Investigations

Investigations include telephone calls, notes, correspondence, advice and site visits made to premises where the Health and Safety at Work etc Act 1974 applies.

7.3 Reasons for investigation:

- (i) to investigate the cause;
- (ii) to determine whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- (iii) to determine whether any specific breaches of legislation have occurred;
- (iv) to increase the knowledge and awareness of the employer/employee;
- (v) to determine whether lessons can be learnt;
- (vi) to achieve any publicity arising from the incident which would have a beneficial effect in increasing knowledge and awareness of the management, general workforce and public.

7.4 Factors to consider when deciding whether to investigate:

- (i) the severity and scale of potential or actual harm;
- (ii) the seriousness of any potential breach of the law;
- (iii) knowledge of the duty holder's past health and safety performance;
- (iv) the enforcement priorities;
- (v) the practicality of achieving results;
- (vi) the wider relevance of the event, including serious public concern.

8.0 The criteria for investigation

8.1 Accidents or dangerous occurrences or diseases which will always be investigated:-

- (i) **Fatalities**, irrespective of cause, excepting those outside the enforcing authority's jurisdiction, e.g road traffic accident¹.

The protocol, agreed between the Health and Safety Executive (HSE), the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS), sets out the principles for effective liaison between the agencies in relation to work related deaths, particularly if there is evidence that the crime of manslaughter or corporate manslaughter may have been committed.

Liaison will take place with the police, coroner and crown prosecution service (CPS) to determine the agreed roles of each organisation in the investigation. Where there is evidence suggesting manslaughter such evidence will be passed to the police or where appropriate the CPS.

Where the police or CPS do not proceed with a manslaughter case an investigation under the Health and Safety at Work etc Act 1974 will continue and the Council may proceed if appropriate with a health and safety prosecution.

- (ii) **Major Injuries** as defined in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), irrespective of cause:-

- all amputations of digits past the first joint
- amputation of hand/arm or foot/leg
- serious multiple fractures
- crush injuries leading to major organ damage
- serious head injuries including loss of consciousness
- burns and scald greater than 10% of the surface area of the body
- permanent blinding of one or both eyes
- any degree of scalping

- (iii) All notified instances in the following categories:-

- workplace transport incidents
- electrical incidents
- falls from a height
- confined space incidents

- (iv) Loss of consciousness caused by asphyxia or exposure to a harmful substance or biological agent.

- (v) All reported cases of disease that meet the criteria for reporting under RIDDOR, except those arising from circumstances/situations which are already under investigation.

8.2 Accidents and incidents where investigation is dependent on the circumstances

Investigation of other accidents and incidents is optional, dependent on the circumstances and a subjective assessment is required.

The following will normally be investigated:-

- (i) All incidents which are likely to give rise to serious public concern².
- (ii) Irrespective of the potential for serious public concerns, any incident where there is serious breach of health and safety law. Dangerous occurrences will be investigated where it appears from the report that the outcome, potential outcome, or apparent breach of law is serious.
- (iii) Accidents or incidents which have been repeated at a particular premises.
- (iv) Accidents to young persons or children.

8.3 Non investigation of incidents outlined in 8.1.

For any incident outlined in 8.1 that is not investigated, a Decision Recording Form will be completed by a senior officer and countersigned explaining the reasons for non investigation.

Grounds for not investigating incidents that would normally be investigated may include:

Where an investigation is impractical, e.g. unavailability of key witnesses(es), key evidence is no longer available.

No reasonably practicable precautions available to prevent the incident/accident or its recurrence

Investigating the accident will mean the Local Authority will be acting Ultra Vires

There is a conflict of interest between the LA as a regulator and duty holder, in which the appropriate enforcing authority should be notified.

Inadequate resources due to other priorities.

8.3 East Cambridgeshire District Council and the HELA Strategic Plan

Accident and incident investigation which will be carried out to support the HELA Strategic Plan outside the above criteria will be detailed in the Annual Service Plan.

9.0 Working with Others

- (i) Police and Crown Prosecution Service

In any fatality, critical injury or suspected manslaughter, the Council and the police will work together until it is agreed which party will go forward with any prosecution.

- (ii) The Coroner's Inquest

If required, the Council's Authorised Officers will provide information for the inquest prior to and at the inquest. Any prosecution will be after the coroner's inquest and public enquiry.

- (iii) Health and Safety Executive

The HSE will be consulted when specialist advice is required or an offence under Section 6 of the Health and Safety at Work etc Act 1974, general duties of manufacturers, has occurred.

- (iv) Primary Authority Partnership Scheme

If the premises are linked to a local authority by way of the Primary Authority Partnership Scheme, officers shall, where appropriate, discuss the incident

with the lead authority and shall always notify the lead authority if there is any death, major injury, work related illness or dangerous occurrence.

(v) Outdoor Activity Centres

Where appropriate, officers will liaise with the Adventure Activities Licensing Authority as detailed in HELA LAC 47/10.

(vi) Licensed Sports Grounds

Where appropriate, officers will liaise with the certifying authority as detailed in the HELA LAC 63/2.

(vii) Care Quality Commission (CQC) & OFSTED

Where appropriate, officers will liaise with the registering body for further advice and guidance and to report any concerns and areas of non compliance.

¹ In particular, suicides and death from natural causes are excluded.

² Public concern means concern to the public in general rather than to those individuals immediately involved. Unless there is clear evidence to the contrary, the presumption is that incidents which involve children, vulnerable adults, multiple casualties, and where also the outcome, potential outcome or breach is serious, will be included, all incidents resulting in RIDDOR-defined major injuries, where it appears from the report that there is likely to have been a serious breach of health and safety law.

GLOSSARY

ACOP	-	Approved Codes of Practice which are designed to maintain and improve standards of health and safety carrying greater authority because they have been formally approved
CCDC	-	Consultant in Communicable Disease Control – appointed by the local authority to give medical opinions
CIEH	-	The Chartered Institute of Environmental Health – the professional body that represents the interests of environmental health officers
Duty holder	-	That person on whom the law places a duty or obligation.
EMAS	-	The Employment and Medical Advisory Service set up under the Employment of Medical Advisory Service Act 1972 to advise and take practical steps on all medical aspects of employment.
HASWA	-	The Health and Safety at Work Act etc. 1974.
HELA	-	Health and Safety Executive Local Authority Liaison unit.
HSE	-	The Health and Safety Executive – the operational and enforcement arm of the Health and Safety Commission
HPA	-	Health Protection Agency
Improvement Notice	-	A notice under Section 21 of HASWA which is served requiring specified improvements to be carried out within prescribed period of time
Lead Authority	-	That local authority, engaged into a formal arrangement, which acts as a central health and safety contact point for a business and other authorities which have outlets in their areas.
Prohibition Notice	-	A notice under Section 22 of HASWA served by officers when they are of the opinion that a person is

carrying on or likely to carry on activities that involve a risk of serious personal injury.

RIDDOR

- The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995