

East Cambridgeshire District Council

HEALTH AND SAFETY ENFORCEMENT POLICY

2018

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East Cambridgeshire District Council

HEALTH AND SAFETY ENFORCEMENT POLICY

1.0 Introduction

- 1.1 East Cambridgeshire District Council (“the Council”) is responsible for regulating health and safety law across a range of work activities and workplaces. Its aim, in the district, is to protect the health, safety and welfare of people at work and to safeguard others, including the public, who may be affected by work activities.
- 1.2 The Enforcement of Health and Safety is divided between the Health and Safety Executive (HSE) and the Council, depending on the main work activity and according to The Health and Safety (Enforcing Authority) Regulations 1998 (1).
- 1.3 As a regulator, the Council uses a variety of methods to support business to manage health and safety risks in a sensible and proportionate way and secure compliance with the law. As part of this, the Council will have regard to economic growth and the impact that its actions are likely to have on businesses.
- 1.4 The Council’s officers are required to follow both the Council’s Corporate Enforcement Policy and the Health and Safety Executive’s Health and Safety Policy Statement (2). This Policy reflects that of the HSE.
- 1.5 This Enforcement Policy Statement is made in accordance with the Legislative and Regulatory Reform Act 2006 (3), the Regulators’ Code 2014 (4) and the Deregulation Act 2015 (5). The Legislative and Regulatory Reform Act 2006 requires regulators to have regard to the Code when developing the policies and principles that guide their regulatory activities.
- 1.6 The Health and Safety policy statement is the Council’s approach to enforcement that is, where its officers take action to enforce the law when issues of non-compliance, hazard or serious risk have been identified.
- 1.7 This policy is designed to set out the arrangements by which the principles of proportionality, consistency, transparency, accountability and targeting of resources will be incorporated into actions.
- 1.8 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 are to be appropriately trained and experienced for the duties that they are asked to perform. Promotion of consistency and competency of staff is to be ensured through continual monitoring and review including annual review of performance and appraisals and the implementation of recognised training needs.

(1) See <http://www.legislation.gov.uk/uksi/1998/494/made>

(2) See <http://www.hse.gov.uk/pubns/hse41.pdf>

(3) See <http://www.legislation.gov.uk/ukpga/2006/51/contents>

(4) See <https://www.gov.uk/government/publications/regulators-code>

2.0 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 Council's District are properly controlled and managed, in order to reduce risks associated with work to the lowest level which is reasonable practicable.

2.2 Interventions will be risk –based. When considering the appropriate course of action to be taken following an intervention, this Policy must be read in conjunction with relevant guidance from the HSE, and relevant guidance from other bodies such as Public Health England (PHE).

2.3 All officers, when making enforcement decisions, must follow this Policy. They must also have regard to, and follow as appropriate, relevant HSE guidance and Standard Operating Procedures (SOPs).

2.4 In addition to providing verbal advice, the enforcement methods the Council can use include:

- providing written information regarding breaches of law;
- requiring improvements in the way risks are managed;
- stopping certain activities where they create serious risks; and
- recommending and bringing, prosecutions where there has been a serious breach of law.

2.5 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). Officers will provide clear information and advice from the HSE, recognised trade associations and other professional organisations.

2.6 It is expected that departures from these policy guidelines will be rare and only following consideration by the Environmental Services Manager in consultation with the service Director. 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 enforcement objectives and priority programmes to reduce risks to health and to protect people.

3.0 Principles of Enforcement

3.1 The Legislative and Regulatory Reform Act 2006 sets out the Code and good principles of regulation that must be followed by the Council. This means that it must have regard, in carrying out all of its regulatory activities, to the need to do so in a way that is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

3.2 Further, under section 18(4) of the Health and Safety at Work etc Act 1974, a duty is placed on the Council to make adequate arrangements for the enforcement of health and safety. These “arrangements” are set out in The National Local Authority Enforcement Code (5).

4.0 East Cambridgeshire District Council Health and Safety

Policy Statement

- 4.1 The Council believes in firm, but fair, enforcement of the law. It is its policy that all enforcement action should be proportionate to the health and safety risks and to the seriousness of any breach of law.
- 4.2 The Council considers that appropriate use of enforcement powers is important, both to secure compliance with health and safety law and to ensure that those who have a legal duty (duty holders) are held to account for significant failures.
- 4.3 The following sections describe:
- the purpose of enforcement;
 - the principles of enforcement;
 - the enforcement methods available to its officers; and
 - how its enforcement principles relate to investigations and prosecutions.

5.0 The purpose of enforcement

- 5.1 Officers take enforcement action to prevent harm by requiring duty holders to manage and control risks effectively. This includes:
- ensuring action is taken immediately to deal with serious risks;
 - promoting and maintaining sustained compliance with the law; and
 - ensuring that those who breach the law, including individuals who fail in their responsibilities, may be held to account (this includes bringing alleged offenders before the courts).

6.0 The principles of enforcement

- 6.1 The Council applies the following principles when conducting its enforcement activities:
- proportionality in how it applies the law and secure compliance;
 - targeting of its enforcement action;
 - consistency of its approach;
 - transparency about how it operates and what you can expect, and
 - accountability for its actions.
- 6.2 These principles apply both to enforcement in particular cases and to the Council’s management of enforcement activities as a whole. They are not applied in isolation, but are informed by an understanding of the business environment. They allow for effective enforcement, without stifling economic growth, by requiring its officers to be proportionate in their decision-making and mindful in keeping the burden on business productivity to a minimum. The Council must follow the principles found in the National Local Authority Enforcement Code. (5)
- (5)See <http://www.hse.gov.uk/lau/national-la-code.pdf>

7.0 Proportionality

- 7.1 The Council adopts a proportionate approach to enforcing the law across different industries and sectors, recognising the importance of supporting businesses to comply and grow.
- 7.2 In its dealings with duty holders, the Council will ensure that its enforcement action is proportionate to the health and safety risks* and to the seriousness of any breach of the law. This includes any actual or potential harm arising from any breach, and the economic impact of the action taken.
- 7.3 The Council expects that duty holders, in turn, will adopt a sensible and proportionate approach to managing health and safety, focussing on significant risks i.e. those with the potential to cause real harm.
- 7.4 Applying the principle of proportionality means that its officers should take particular account of how far duty holders have fallen short of what the law requires and the extent of the risks created.
- 7.5 Some health and safety duties are specific and absolute. Others require action “so far as is reasonably practicable”. Council officers will apply the principle of proportionality in relation to both.
- 7.6 Deciding what is reasonably practicable to control risk involves the exercise of judgement. Officers, when considering the adequacy of the protective measures taken, will balance the degree of risk against the money, time or trouble needed to avert that risk. Unless it can be shown that there is a gross disproportion between these factors and that the risk is insignificant in relation to the cost, duty holders must take measures and incur costs to reduce the risk and comply with the law.
- 7.7 The Council can also adopt a proportionate approach to enforcing the law during the Initial phase of an emergency response, so that duty holders, and others, can in turn manage risks effectively and proportionately.

*** 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 its outcome.**

8.0 Targeting

- 8.1 The Council uses a risk-based approach when deciding which duty holders to proactively inspect having regard to the latest revision of HSE Local Authority Circular (LAC) 67 (2) taking into account factors such as size, type of activities, industry sector, and the associated death, injury and ill-health rates.
- 8.3 The Council uses proportionate and outcome-based criteria when deciding which complaints and, which incidents, diseases and dangerous occurrences, reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR), have to be investigated. It does this by following the HSE guidance on Incident Selection Criteria (6).

(6) See <http://www.hse.gov.uk/enforce/when-how-investigate.htm>

- 8.4 This means that the Council targets its inspection and investigation resources primarily on those activities, industries and sectors giving rise to the most serious risks, where and when the hazards are least well controlled, or where competence to manage health and safety is in doubt. Low risk activities will not, in general, be subject to enforcement unless actual harm has occurred.
- 8.5 The Council focuses its enforcement activity on the most serious risks and on those who are responsible for and best placed to control these risks whether employers, employees, or the self- employed.
- 8.6 The Council recognises that it is neither possible nor necessary to consider all issues of non-compliance which may come to light during an inspection or investigation. Its officers will, therefore, target their enforcement action to deal with the most serious risks.
- 8.7 Where several duty holders have responsibilities, the Council may take action against more than one, when it is appropriate to do so in accordance with this policy.

9.0 Consistency

- 9.1 The Council adopts a consistent approach to enforcement of the law across different industries and workplaces, recognising the importance of fair treatment to all in promoting and sustaining economic growth.
- 9.2 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve compliance with the law.
- 9.3 The Council understands that people managing similar risks in similar industries expect a consistent approach from its officers when taking enforcement action. However, consistency is not a simple matter. Every situation is different by virtue of the industry, workplace, its risks, management systems etc. As a result, its officers are faced with many variables in addition to the degree of risk and the seriousness of any breach, including the attitude and competence of management, incident history and any previous enforcement action.
- 9.4 Any enforcement decision therefore requires the appropriate exercise of individual discretion and professional judgement.
- 9.5 The Council aims to ensure, through the application of the HSE enforcement decision-making framework, the Enforcement Management Model (EMM) (7) and through peer review, that its enforcement decisions are consistent.
- 9.6 Where enforcement action conflicts with the requirements of other regulators, the Council will work with them to resolve the differences.

10.0 Transparency

- 10.1 The Council's enforcement action should clearly outline to duty holders not only what they have to do but, where relevant, what they don't.
- 10.2 Where non-compliance has been identified, its officers will clearly and promptly explain the decision taken, their reasons, and the actions required to achieve compliance. They
- (7) See <http://www.hse.gov.uk/enforce/enforcement-management-model.htm>

will discuss reasonable timescales with the duty holder and explain what will happen if they fail.

10.3 Additionally, its officers will differentiate between the actions required to comply with the law, and advice given to achieve good practice or inform of upcoming changes to legal requirements. This will ensure that unnecessary economic burdens are not imposed on businesses.

10.4 Transparency also involves keeping employees, employee representatives, injured persons and their families informed of relevant enforcement action. However, this is subject to legal constraints on disclosure.

11.0 Accountability

11.1 As a regulator, the Council is accountable to all and its enforcement actions can be judged against the principles and standards set out in this policy. Whilst not diminishing the responsibility of duty holders to comply with the law, this includes its duty to have regard to economic growth in our regulatory activities to comply. Further, the Council has its own complaints procedure.

11.2 Businesses, employees, their representatives and others need to know what to expect when our officers visit and how to raise any complaints they may have.

11.3 Officers will provide a copy of the leaflet “When a health and safety inspector calls” (8) to those who have not been visited before. In addition to outlining basic expectations, this leaflet outlines procedures for dealing with comments and handling complaints.

11.4 In particular, it:

- describes the procedure to complain about enforcement decisions made by officers, or if procedures have not been followed; and,
- explains about the right of appeal to an Employment Tribunal in cases where statutory notices have been issued.

12.0 The methods of enforcement

12.1 The Council has a range of enforcement methods to secure compliance with the law and to ensure a proportionate response to any breaches.

12.2 Officers may provide written information and advice regarding breaches of the law following an inspection or investigation. This may include warning the duty holder that, in the opinion of the officer, they are failing to comply with the law. Where appropriate, officers may also serve improvement and prohibition notices, issue simple cautions and prosecute.

12.3 In determining what level of enforcement action is appropriate, officers exercise discretion and professional judgement according to the circumstances found. They are guided in this process by the EMM, which provides a framework for consistent enforcement decision making and takes account of the business context on a case by case basis. It also considers aspects of economic gain that could undermine other businesses.

12.4 A prohibition notice can be served when an officer is of the opinion that there is a risk of serious personal injury associated with a particular work activity or process or, if a

(8) See <http://www.hse.gov.uk/pubns/hsc14.pdf>

serious deficiency in measures is identified, to prevent or mitigate the effects of major hazards. There does not need to be a breach of the law. Such a notice can take immediate effect or be deferred for safety reasons.

12.5 An improvement notice can be served when an officer is of the opinion that there is a breach of the law which needs to be remedied within a certain period of time.

12.6 Failure to comply with either type of notice is a criminal offence and can result in prosecution.

12.7 Both prosecution and, where appropriate, cautions, are important ways to hold those responsible to account for breaches of the law. Where it is appropriate to do so in accordance with this policy, these measures can be taken in addition to issuing an improvement or prohibition notice.

12.8 Where officers have choices about how they exercise their functions, they will:

- consider how they might carry out their activities to minimise likely negative economic impact: and,
- adapt their activities to maximise any likely positive economic impact.

12.9 The Council will consider making public, 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.

13.0 Investigation

13.1 The Council uses the HSE guidance when deciding whether to investigate incidents. It is recognised that it is neither possible nor necessary for the purposes of the Health and Safety at Work etc Act 1974 to investigate all issues of non-compliance with the law. When making such decisions, including the level of resource to be used, it will take the following factors into account:

- the scale of potential or actual harm;
- the seriousness of any potential breach of the law;
- enforcement priorities;
- the practicality of achieving results;
- the wider relevance of the event, including serious public concern.

13.2 The Council will undertake investigations in order to:

- gather information and establish the facts
- identify the immediate and underlying causes and the lessons to be learnt
- prevent recurrence
- identify breaches of health and safety law
- take appropriate action, including the service of notices and prosecution.

13.3 The Council will devote most resources to investigating incidents involving the more serious circumstances, including the investigation of work related-deaths.

14.0 Investigation of work- related deaths

- 14.1 Where there has been a breach of law leading to a work- related death, consideration needs to be given to whether or not the circumstances of the case might justify a charge of manslaughter or corporate manslaughter.
- 14.2 To ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, The Council, together with other regulators, has jointly agreed and published Work- related deaths. A protocol for liaison (9). Further, more detailed guidance can be found in the associated publication Work-related Deaths Protocol: Practical Guide.
- 14.3 The police are responsible for deciding whether or not to pursue a manslaughter or corporate manslaughter investigation and whether or not to refer a case to the CPS to consider possible manslaughter charges. The Council investigate possible health and safety offences. If, during the course of its investigation, it finds evidence suggesting manslaughter or corporate manslaughter, it will refer it to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, the Council will consider whether or not to bring a health and safety prosecution in accordance with this policy.

15.0 Prosecution

- 15.1 Prosecution is an essential part of enforcement, ensuring that where there has been a serious breach of the law, duty holders (including individuals) are held to account. This includes bringing alleged offenders before the courts.
- 15.2 The Council decides whether or not to proceed with health and safety prosecutions and will use discretion when making this decision. It takes account of the evidential stage and the relevant public interest factors set down by the Director of Public Prosecutions in The Code for Crown Prosecutors (11). No prosecution will go ahead unless there is sufficient evidence to provide a realistic prospect of conviction and that prosecution is in the public interest.
- 15.3 Where sufficient evidence has been collected and it is considered in the public interest to prosecute, the Council would consider that prosecution should go ahead.
- 15.4 The Code for Crown Prosecutors requires the decision to prosecute to be kept under continuous review, so that any new facts or circumstances, in support of or undermining our case, are taken into account in our decision to continue or terminate the proceedings.

16.0 Public Interest

- 16.1 In the public interest, the Council should normally prosecute or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances in the (non-exhaustive) list 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;

(9) See <http://www.hse.gov.uk/scotland/workreldeaths.pdf>

(10) See <http://www.hse.gov.uk/enforce/wrdp/>

(11) See http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

- 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;
- 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 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;
- officers have been intentionally obstructed in the lawful course of their duties.

16.2 The Council also expects that, in the public interest, it should 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.

16.3 The Council may seek to raise the courts' awareness of the gravity of health and safety offences to the full extent of their powers whilst recognising that it is for the courts to decide whether or not someone is guilty or not and what penalty to impose on conviction.

17.0 Prosecution of individuals

17.1 Subject to the above, the Council will identify and prosecute individuals, or recommend prosecution, where it considers this is warranted. It will consider the management arrangements and the role played by individual directors and managers and will consider taking action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or was attributable to their neglect and where it would be appropriate to do so in accordance with this policy.

18:0 DATA PROTECTION

18.1 In line with the General Data Protection Regulation 2018 and the Data Protection Act 2018, East Cambridgeshire District Council is fully committed to protect the privacy of our constituents, staff and members. We ensure the safe processing of personal data through strict guidelines for collection, storage and retention of information. Where appropriate, data sharing protocols are entered into and robust security measures are in place. The Council maintains its Public Services Network (PSN) compliance, demonstrating its on-going commitment to supporting best practice in the maintenance and handling of data.

For further information contact: The Data Protection Officer, East Cambridgeshire District Council, The Grange, Nutholt Lane, Ely, Cambridgeshire CB7 4EE.

Email: dataprotection@eastcamb.gov.uk

APPENDIX A - 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.
CPS	Crown Prosecution Service
Duty holder	That person on whom the law places a duty or obligation.
EMM	Enforcement Management Module
HASWA	The Health and Safety at Work etc. Act 1974.
HELA	Health and Safety Executive Local Authority Liaison unit.
HSE	The Health and Safety Executive
PHE	Public Health England
Improvement Notice	A notice under Section 21 of HASWA which is served requiring specified improvements to be carried out within prescribed period of time.
Primary Authority	A statutory scheme, established by the Regulatory Enforcement and Sanctions Act 2008 (the RES Act). It allows an eligible business to form a legally recognised partnership with a single local authority in relation to regulatory compliance.
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 2013