

HEALTH & SAFETY ENFORCEMENT POLICY

Introduction

The health and safety enforcement work includes:

- Enforcing health and safety in premises within the City boundary, including:
 - Shops
 - Offices
 - Warehouses
 - Hotels
 - Restaurants
 - Leisure and Public Entertainment venues such as theatres, nightclubs etc.

The other main enforcement agency is the Health and Safety Executive (HSE), which deals with health and safety in:

- Factories
- Building sites
- Chemical plants
- Railways
- Fairgrounds
- Hospitals
- Businesses operated by the city council

Our Role

Our role is to ensure that employers and the self-employed protect the health and safety of people at work, and of others who may be harmed by work activities, such as members of the public.

All those who live, work in, or visit Manchester should have a clear understanding of our enforcement policy and the steps being taken to ensure that it is followed. Our objectives are to:

- achieve consistency of enforcement, ensuring that different dutyholders in similar circumstances are treated in a similar way;
- ensure fairness in the way that legislation is applied to business;
- explain how we have decided upon a particular course of action;

With respect to premises for which the City Council has an interest we will:

- carry out our enforcement policy and practice in exactly the same way that we do in all other premises;

- ensure that the attention received is in accordance with the criteria applied to other duty holders.

Principles of Enforcement

Manchester City Council has formally adopted the central and local government Concordat on Good Enforcement. This means that we will be open, helpful and fair to ensure that any enforcement action is proportionate to the risks.

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.

Our Approach

Prevention

We believe that the first step in enforcement is to help prevent contravention of the law by raising awareness and promoting good practice. We provide written guidance on aspects of the law and are happy to discuss and explain health and safety requirements.

- **Inspection**

Environmental Health Officers also carry out inspections of premises, in order to:

- ensure that duty holders are carrying out their duties under health and safety at work legislation;
- help businesses improve their management of health and safety by giving guidance and advice;
- investigate accidents at work and cases of ill health which may have been caused by working practices;
- investigate and help resolve health, safety and welfare complaints made by employees and members of the public;
- ensure that acceptable standards of health, safety and welfare are in place to prevent accidents and ill health;

We are concerned to help duty holders do what is reasonably practicable to control risks to health and safety, but where it is necessary, we will use the legal powers available to us to achieve compliance.

- **Inspection Frequency**

The frequency of visits depends very much on the reason for the visit and the type of workplace. Some workplaces will be visited more frequently than others.

Generally, those that involve more serious hazards, where the risks are higher, or where the hazards have been poorly controlled in the past, are visited more often. We often call unannounced and will probably want to talk to the relevant manager, supervisor, employees and health and safety representative.

It is also likely that we will want to look around parts of the workplace and examine health and safety policies, risk assessments, plant maintenance records, accident records and any other relevant documentation.

- **After The Inspection**

Inspectors have a duty under the Health and Safety at Work etc. Act, 1974 to communicate with employees about workplace health, safety and welfare. This may be done by talking to safety representatives and employees about the outcome of the visit, or by sending a letter to them.

Advice or guidance will be given during the visit and details given of what, if any, further action is going to be taken.

We prefer Informal Action

We will use our best efforts to resolve any issues where the law may have been broken without issuing formal notices, or referring the matter to the courts.

Inspectors have to exercise considerable discretion when approaching dutyholders. The course of action depends on the circumstances, and inspectors are likely to take into account the attitude of the management and the safety record of the company in deciding how best to proceed.

Warnings or guidance may be given on the steps required to put things right, although formal enforcement powers (which may include prosecution, simple caution or the service of notices) will be used if this is the most appropriate way of dealing with the matter. When we write we will make sure that legal requirements will be clearly distinguished from recommendations.

We sometimes have to give legal notice

The legislation that we enforce provides for the service of formal notices on individuals, businesses or other organisations requiring them to meet specific legal requirements.

- Improvement notices require that remedial steps be taken within a certain time. The time allowed will usually be discussed with the employer;
- Prohibition notices require that activity is stopped until things are put right. The inspector must think that there is a risk of serious personal injury

Failure to comply with notices is taken very seriously and is likely to lead to prosecution. Appeals against notices can be taken to employment tribunals: information on how to do this is provided when notices are issued.

The final resort is prosecution

Where the circumstances warrant it and the alternative actions mentioned previously in this policy are considered inappropriate, then prosecution may result. Prosecutions are more likely if:

- death was a result of a breach of legislation;

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

Prosecution will, in the public interest, also be considered where:

- 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 the 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 the work activity.

To ensure that fair and consistent decisions are made regarding prosecutions any decision to prosecute takes account of the Code for Crown Prosecutors by having regard to the weight of evidence and public interest.

We will, during the investigation, give the offender the opportunity to be interviewed, with legal representation if they so wish, and will give due regard to any statutory defences, explanations or mitigation.

The Human Rights Act 1998 introduced an obligation on public authorities to act consistently with the Articles of the European Convention on Human Rights. These articles confer rights on an individual for example, it confers a right of respect for a person's home, other land and/or 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.

In certain circumstances a Simple (previously Formal) Caution may be an accepted alternative to prosecution.

In some instances the Service may have shared responsibilities with another enforcement agency. In these circumstances we will liaise with that other agency to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings which are instituted are for the most appropriate offences.

Confidentiality

We give due weight to the protection of matters such as personal privacy, public security and national security. Inspectors may disclose information, in general, only where disclosure would

further the protection of health and safety of workers and the public. The Health and Safety at Work Act, 1974 makes special mention of the protection of trade secrets.

Details of complainants who contact us with concerns about workplace activities will be treated in the strictest confidence.

A Consistent Approach

All our staff will:-

- be courteous, open, fair and consistent in enforcing the law;
- show their official identification or give a business card when they visit;
- give their name when speaking on the telephone;
- answer enquiries as promptly as they can;
- tell you if they are going to write following a visit: sometimes staff need to consult colleagues or others, seek further advice, or conduct further investigations.

We will be consistent in our approach by following the criteria and guidance set down in relevant legislation and codes of practice. We will ensure that before considering prosecution, the case will be subject to independent review by a Senior Manager and the City Solicitor.

Every effort is made to ensure consistent enforcement standards between local authorities although local circumstances may preclude an entirely uniform approach on all issues.