

# Enforcement Policy



# Introduction

Bromley Council is an enforcement authority under the Health and Safety at Work etc Act 1974 (the 'Act'). This means we are responsible for ensuring that:

- The health safety and welfare of people at work are adequately protected by their employers
- The self employed protect their own health safety and welfare and
- Anyone else who may be affected by work are adequately protected

These responsibilities apply mainly to the retail, wholesale, office and leisure businesses in the Borough.

This policy sets out the general principles and approaches we will follow when carrying out our function.

The Act places duties on various people including employers, the self-employed and staff (called 'duty holders' in this policy).

We will make appropriate use of our enforcement powers, including prosecution, so that we can:

- secure compliance with health and safety law, and
- ensure that people who have duties under the Act are held to account for any failures to safeguard health, safety and welfare.

## Enforcement: why, how and when we do it

Enforcement means all dealings between Bromley Council and duty holders.

We seek to ensure that duty holders effectively manage and control risks to health, safety and welfare to prevent harm. We will do this by:

- promoting and achieving substantial compliance with the law by advice and guidance whenever possible
- ensuring that duty holders take action to deal with serious risks immediately
- ensuring that duty holders who breach the Act are held to account. This may include prosecution.

We will carry out enforcement by:

- preventative action – taken before any incidents, accidents or ill health occurs – to assess, promote and enforce compliance
- reactive actions after incidents, accidents or ill health has occurred to identify the causes, take preventative actions and enforce compliance.

We will undertake our enforcement activities at the appropriate time. The majority of enforcement work will be carried out during the normal working day (between 8am and 6pm), but inspectors will work at other times when necessary.

## How we co-operate with civil claims for compensation

We do not take enforcement action in all situations where those who have been affected by a work activity might wish to claim compensation in the civil courts.

We will co-operate with people making civil claims if we receive requests via the courts by way of subpoena or other orders for disclosure. You can also make a request for information under the Freedom of Information Act 2000. Please note we may charge for this type of request.



## Our appointed inspectors and their powers

We appoint inspectors to enforce the Act. All inspectors carry a "warrant card" setting out their powers.

Inspectors have a range of enforcement options to ensure compliance with the law and respond to criminal offences.

Our inspectors may:

- offer information and advice to duty holders, either face to face, in writing or both
- give warnings to duty holders that they are failing to comply with the law
- serve **improvement notices** stating that an offence has been committed and requiring remedial action within a stated time
- serve **prohibition notices** stating that an offence has been committed in circumstances where a risk of serious personal injury exists.
- issue **simple cautions** (formally known as formal cautions)
- bring **prosecutions**.

Simple cautions and prosecutions are important ways to bring duty holders to account for alleged breaches of the law. Where appropriate and in accordance with this policy, we may use these and other enforcement options.

Please see Appendix A for more information about how our inspectors apply the enforcement options.

To use any of these options, inspectors have the right to:

- enter premises
- take a police officer or other person with them
- examine, investigate, measure or photograph
- take samples
- interview people

## Our enforcement principles

We believe in firm but fair enforcement of the Act. Our policy will be informed by the principles of:

- **proportionality** – in applying the law and securing compliance with it
- **targeting** – of enforcement action
- **transparency** – in the way we operate and what those who are regulated can expect
- **accountability** – for our actions and those of our inspectors.

These principles are explained below.

### Proportionality

This means that inspectors will take enforcement action that is appropriate to the health safety and welfare risks or breach of duty and the response to previous enforcement action.

Inspectors will take account of:

- how far the duty holder has fallen short of what the law requires, and
- the extent of the risks to people from the breach.

Some health and safety duties are specific and absolute. Others require action "so far as is reasonably practicable". Our inspectors will apply the principles of proportionality to both kinds of duty.

Deciding what is a "reasonably practicable" way to control risk involves an inspector making a judgement. He or she will balance the degree of risk against the time, cost and effort needed to control it.

Unless these factors are grossly disproportionate to the risk, the duty holder must take measures to reduce the risk. Our inspectors will expect duty holders to follow relevant good practice. If good practice is not clearly established, the Act requires duty holders to explicitly assess the significance of the risk to determine what actions they must take. Ultimately the courts decide what is "reasonably practicable" in any particular case.

## Targeting

This means that inspectors will:

- concentrate their efforts on activities that give rise to the most serious risks or where hazards are least well controlled, and
- focus enforcement action on duty holders who are responsible for the risks and are best placed to control them. If several duty holders have responsibility, enforcement action may be taken against more than one where appropriate.

Inspectors will give particular attention to how competently the duty holder manages health, safety and welfare risks. A poorly managed, relatively low-risk site can present a higher risk to staff and others than a well-managed, higher-risk site.

We will target our enforcement action as follows:

1. A programme of planned inspections based on a system of risk assessment developed by the Health and Safety Executive (HSE). Details of the system are set out in Local Authority Circular 67/2 issued by HELA (HSE/LA Enforcement Liaison Committee)
2. Investigation of accident reports and the analysis of accident data
3. Investigation of complaints about health, safety or welfare.
4. The need to provide advice, guidance and information to businesses.
5. Other information from HSE or other sources which indicates that enforcement action needs to focus on particular areas.



## Consistency

Consistency of approach does not mean uniformity. It means that our inspectors will take a similar approach in similar circumstances to achieve similar results.

We understand that duty holders managing similar risks expect to be dealt with consistently in the way our inspectors give advice, use enforcement notices and decide whether or not to prosecute.

Inspectors face many variables when dealing with businesses, including the degree of risk, the attitude and competence of management, the history of the business and the seriousness of the breach.

It is difficult to achieve consistency among inspectors, but we will establish internal systems and procedures that will ensure it, as far as possible. In particular we will follow the Enforcement Management Model developed for local authorities by the HSE.

We authorise all inspectors in writing, setting out the extent of their powers. They must show their authorisation when requested. We will decide their level of authorisation after assessing their competence based - qualification, training and experience.

We support the principles of the Lead Authority Partnership scheme and the Primary Authority Scheme, under which a local authority partners a business to help it comply with health and safety requirements. The businesses involved are usually national chains with outlets in many areas. When dealing with a business involved in the Lead Authority Partnership scheme or Primary Authority Scheme, our inspectors will liaise with the relevant lead authority:

- before taking formal action, except in the case of immediate danger
- after serving a prohibition notice
- when significant shortcomings have been identified which need to be dealt with at a national level
- following on-site investigation of a death, major injury or case of work-related illness or dangerous occurrence.

## Transparency

Transparency means:

- helping duty holders to understand what is expected of them and what they should expect from our inspectors
- making clear to duty holders what health and safety law requires them to do and what would be desirable but not compulsory. This applies both when inspectors are dealing with businesses face to face and in writing.

We will establish procedures to ensure that employees and their representatives, complainants, victims and members of their families, and the public are informed about health, safety and welfare matters. These procedures will take into account appropriate legal requirements and restrictions.

It is important that duty holders and others affected by our enforcement decisions know what to expect from an inspector when he or she calls and what rights of complaint are open to them.

When an inspector visits premises to carry out any enforcement actions, he or she will leave written information setting out what the duty holders can expect. In particular:

- Inspectors will always identify themselves and give their name both in face to face and written communication. The name and contact details of their line managers will be given if requested and will be set out in all written communication.
- When inspectors offer duty holders information, advice or warnings, either face to face or in writing, they will tell the duty holder what to do to comply with the law and explain why. If asked, inspectors will write to confirm any advice and make a clear distinction between legal requirements and best practice.
- If an improvement notice has to be served, the inspector will discuss the notice with the duty holder and if possible resolve points of difference before serving it. The notice will say that in the inspector's opinion a breach of the law has been committed; set out what needs to be done and why; and set a date by which it should be done.
- If a prohibition notice has to be served, the inspector will explain why action is necessary.
- If notices are served, inspectors will provide information about the right of appeal to an industrial tribunal.

During our enforcement work, we receive, require or otherwise identify a range of information relating to health, safety and welfare. Its disclosure is subject to various legal requirements.

We will maintain a public register of notices that relate to matters of public safety. The register will be available from the Public Protection Department at the Civic Centre, Bromley, during normal office hours (9am – 5pm Monday to Friday).

Each year we will prepare and publish a "Service Plan" that sets out the aims and objective of our enforcement work for the year ahead and reviews our performance for the last year.

## Accountability

We are accountable to businesses and the public for our actions. This is why we have:

- policies and standards against which we can be judged, and
- an effective and easily accessible way of dealing with comments and complaints.

Our complaints procedure is called "Getting it Right". This is available from all our offices and libraries. We will follow it to deal with complaints to us about our health and safety enforcement work.



A complaint may be defined as:

"An expression of dissatisfaction, however made, which alleges a failure by the Council or its inspectors to perform in line with its stated practices or policies but does not include complaints about actions by inspectors where there are statutory appeals procedures through the courts or industrial tribunals". (HELA Local Authority Circular 40/1).

Complaints may be made in face to face contact, in writing or by electronic means.

If a complaint is not resolved satisfactorily, the complainant has the right to refer the complaint to either:

The Health and Safety Executive (Local Authority Unit), Rose Court, 2 Southwark Bridge, SE1 9HS, or

The Local Government Ombudsman, whose address is in the "Getting it Right" leaflet which is available from any council office or library.



We want inspectors to view complaints as constructive and positive and as an opportunity to improve the service. We encourage inspectors to be open about recognising and recording complaints themselves as well as accepting those that come directly from service users.

We will give the HSE an annual summary of any complaints received about our enforcement work, as requested in HELA (HSE/Local Authorities Liaison Committee) Local Authority Circular 40/1.

If we have served statutory notices, we will explain that there is the right to appeal against the notice to an industrial tribunal.

## Investigating accidents and complaints

Investigations try to determine the following:

1. The causes.
2. Whether action has been taken or needs to be taken to prevent a recurrence or ensure compliance with the law.
3. Lessons to be learnt, thus influencing good practice and the law.
4. The appropriate level of enforcement action.

To maintain a "proportional" approach to investigation and a balance between preventative and reactive work, our inspectors will give the most serious incidents the most attention. This means they will not investigate some accidents or complaints at all or as thoroughly as others.

To help inspectors make these decisions, they follow an Incident Investigation Selection Procedure

In general our policy is to:

1. Investigate all work-related deaths.
2. Investigate accidents, occupational ill health and dangerous occurrences based on –
  - the actual or potential severity of the event
  - the seriousness of the potential breach
  - the duty holder's previous record
  - our enforcement priorities
  - the practicalities of achieving results
  - the relevance of the event to a wider range of premises or operations
  - legal factors
  - our resource constraints (i.e., budget and staffing)
  - political factors and public expectations.
3. Investigate complaints about occupational health, safety and welfare taking into account:
  - whether the circumstances could cause death, injury, a dangerous occurrence or ill health
  - the imminence of the risk
  - the type and number of people at risk
  - the duty holder's previous record
  - the reliability of the information
  - attempts at self-resolution
  - the practicalities of investigation
  - political factors and public expectations.

## Appendix A

### Policy on the use of enforcement options

#### 1. Prosecution

The main aim of our enforcement work is preventative and to ensure that duty holders manage and control risks to prevent harm, but prosecution is an essential part of our enforcement role. The Health and Safety Commission (HSC) expects a prosecution to proceed if, during their enforcement work:

- inspectors collect enough evidence to give a realistic prospect of conviction, and
- a decision to prosecute has been taken in accordance with this policy, the Enforcement Management Model and the Code for Crown Prosecutors.

We may prosecute without prior warning or use alternative enforcement options if circumstances merit this. The decision to prosecute rests with us and our inspectors.

In general, we will normally prosecute if:

- death results from a breach of health, safety or welfare legislation
- it is merited by the seriousness of the alleged offence, the seriousness of any actual or potential harm, and the general record or approach of the duty holder
- there has been reckless disregard for health, safety and welfare requirements
- there have been repeated breaches giving rise to significant risk, or persistent and significant poor compliance
- a duty holder's standard of managing health, safety and welfare is far below what is required and has created significant risk
- a duty holder has failed to comply with an improvement notice or a prohibition notice or there has been a repetition of a breach that has been subject to a simple caution
- false information has been deliberately supplied, or there has been intent to deceive over a matter that might cause significant risk
- inspectors have been deliberately obstructed.

We will also consider prosecution if:

- it is appropriate in all the circumstances as a way of drawing attention to the need for compliance with the law, and if conviction and the maintenance of standards required by the law may deter others from similar failures, or
- a breach that gives rise to significant risk has continued despite relevant warnings from employees or their representatives or others affected by a work activity.

An impartial 'instructing officer' will review all reports from inspectors recommending prosecution to ensure they are being properly brought in accordance with this policy, the Enforcement Management Model and the Code for Crown Prosecutors.

#### ***Prosecution: Crown Court or Magistrates' Court?***

Certain offences under health, safety and welfare law can be heard at either a Magistrates' Court or the Crown Court.

If we consider that alleged offences are more serious and that the Crown Court's higher sentencing powers may be appropriate, we will ask the magistrates' court to commit the matter to the Crown Court for trial.

Sentencing is ultimately a matter for the courts, but the Court of Appeal has given guidance on factors that should be considered (*R v F Howe and Sons (Engineers) Ltd 1999*). If appropriate, we will draw the court's attention to factors that are relevant in sentencing.

#### ***Death at work***

If a death at work occurs as a result of a possible breach of the Act, we must consider the possibility of manslaughter charges along with the police, Crown Prosecution Service (CPS) and other enforcement agencies.

The police are responsible for deciding whether to pursue a manslaughter investigation and refer the matter to the CPS for manslaughter charges. Our inspectors are responsible for investigating and prosecuting possible health, safety and welfare offences.

When investigating a work-related death, our inspectors will follow the principles in "Work Related Death – A Protocol for Liaison" and work in close co-operation with the police and CPS.

## Prosecutions of individuals

If necessary, we will identify and prosecute individuals if this is in accordance with this Policy and the Enforcement Management Model.

When considering this action, we will take into account the management chain and the role played in the breach by the individual (director, manager or employee). We will consider action against them if the inspection or investigation reveals that the offence was committed with their consent or connivance or is the result of their neglect.

Following a conviction we will generally seek to publicise the case and factual information about the charges and penalties imposed by the court.

We will publish annually the names of all those convicted or issued with a simple caution for breaches of the Act during the previous year, and information about improvement and prohibition notices served. This will include passing such information to the HSE.

## 3. Prohibition notices

Where an Inspector believes that there is a "Risk of serious personal injury" he/she may serve a prohibition notice to stop a work activity.

The authority to serve prohibition notices will be specified in an inspector's authorisation. The decision to serve a prohibition notice lies with the inspector.

Inspectors will decide on the use of prohibition powers in accordance with the following general principles and the Enforcement Management Model:

- There is the potential to cause death, serious injury, a dangerous occurrence or serious ill health from a breach of law.
- The risk is imminent.
- The type and number of people at risk merit this.
- The duty holder's previous record indicates that alternative enforcement options are not appropriate.

In appropriate circumstances, prohibition notices are likely to be served without prior warning or the use of alternative enforcement options such as warnings or improvement notices.

Failure to comply with a prohibition notice is likely to result in prosecution.

## 4. Improvement notices

The authority to serve improvement notices will be specified in the inspector's authorisation. The decision to serve an improvement notice lies with the inspector.

Improvement notices are a formal way of notifying duty holders of a breach of legal requirements.

Inspectors will decide on the use of improvement notices in accordance with the following general principles and the Enforcement Management Model. Their use must be:

- proportional to the seriousness of the breach
- appropriate to the potential of the circumstances to cause death, injury, a dangerous occurrence or ill health
- appropriate to the imminence of the risk
- appropriate to the type and number of people at risk from the breach
- assessed in view of the previous record of the duty holder.

Improvement notices will not usually be the inspectors' first choice of enforcement action and we expect that improvement notices will usually be served where informal approaches (advice or letters) have failed to achieve compliance, or we have identified repeated breaches.

Failure to comply with an improvement notice is likely to result in prosecution.



## 5. Informal warnings

All appointed inspectors can issue warnings.

A warning is a statement by an inspector (verbally or in writing) that a breach of health, safety and welfare law has been identified.

Failure to act on a warning is not an offence but could lead to other enforcement action including the service of improvement notices or possibly prohibition notices if there has been a significant change in the situation. Prosecution following only an informal warning is unlikely, but in keeping with this policy an inspector can bring prosecution at any time without the use of other enforcement options.

Informal warnings will be the usual means of informing duty holders of breaches where circumstances do not merit other enforcement options.

## 6. Advice and Guidance

All inspectors can give advice and guidance.

Providing advice and guidance to duty holders is our preferred method of working with "Duty Holders" and will be used in the first instance unless the situation makes one of the other enforcement options necessary.



