



Barrow Borough Council

Public Protection Services - Health and Safety Enforcement Policy

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1. Purpose

To provide in a single document the Health and Safety Enforcement Policy of Barrow Borough Council.

2. Application

This policy will be implemented and supported by authorised officers within Public Protection Services.

3. References

- Health & Safety Executive (HSE) Enforcement Policy Statement
- HSE Enforcement Management Model (EMM)
- HSE National Local Authority (LA) Enforcement Code
- HSE Section 18 Guidance
- Legislative and Regulatory Reform Act 2006
- Regulators Code 2013
- The Enforcement Concordat
- The Work Related Death Protocol
- Corporate Manslaughter of Health & Safety Offences Causing Death – Definitive Guidance February 2010

4. Policy

It is the Council's policy to ensure its approach to enforcement is consistent with HSE Statement on Enforcement Policy. This statement sets out the general principles and approach, which the Executive expects, enforcing authorities to follow. This Policy has been written having regard to the Enforcement Concordat and the Regulator's Code. Officers will therefore have regard to and implement the principles of proportionality, consistency, transparency and targeting.

5. Procedures

In relation to health and safety it is the Council's aim to protect the health, safety and welfare of people at work, and to safeguard others, mainly members of the public who may be exposed to risk from the way work is carried out. It will achieve this by education, providing advice and by regulating the activities of duty holders to manage and control risks effectively. An important part of this is to use enforcement powers to secure compliance with legal requirements.

Enforcement applies to all dealings between enforcing authorities and those on whom the law places duties.

The purpose of enforcement is to: -

- Ensure that duty holders take action to deal immediately with serious risks
- Promote and achieve sustained compliance with the law
- Ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities may be held to account, which may include bringing alleged offenders before the courts

Intervene to assess, promote and ensure compliance with the law, to deal immediately with serious risk and to prevent accidents and ill health from occurring.

Investigate after an incident to identify underlying causes and the lessons to be learned, prevent recurrence, detect breaches and take appropriate action.

Permission to ensure that appropriate licenses are in place where the law requires close control of those activities where the potential for significant health impairment is high.

Taking action to ensure that action is taken that is proportionate to the risk.

Enforcement of criminal law is distinct from civil claims for compensation. Although enforcement action may not be taken civil claims may be appropriate. Enforcement is not intended to assist claims for compensation.

The term enforcement has a wide meaning and applies to all dealings between the Council and those on whom health and safety law places duties, employers, the self-employed, employees and others.

Authorised officers (sometimes referred to as inspectors) seek to secure compliance with the law and to ensure a proportionate response to criminal offences. Inspectors may offer duty holders advice and support, both face to face and in writing. This may

include warning a duty holder that in the opinion of the inspector, they are failing to comply with the law. Where appropriate officers may also serve improvement and prohibition notices, issue simple cautions and they may prosecute.

The appropriate use of enforcement powers is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failure to safeguard health, safety and welfare.

Authorised officers when judging compliance with the law take into account relevant case law, codes and guidance, use sensible judgement about the extent of the risks and the effort that has been applied to prevent them.

6. The Principles of Enforcement

The Council believes in firm but fair enforcement of health and safety law. We shall follow the principle of proportionality in applying the law, securing compliance, and will be consistent in approach and targeting of enforcement action.

We operate in a transparent manner and are accountable for our actions.

6.1 Proportionality

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcing authorities to achieve compliance or bring duty holders to account for non-compliance should be proportionate to any risks to health and safety, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.

We will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

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

Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where duty holders must control risks so far as is reasonably practicable, we will when considering protective measures taken by duty holders take account of the degree of risk and the sacrifice needed whether in money, time or trouble on the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.

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

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

As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action, in effect how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

6.2 Consistency

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

Duty holders¹ managing similar risks expect a consistent approach from enforcing authorities in the advice tendered the use of enforcement notices, approvals etc, and decisions on whether to prosecute and in the response to incidents.

We recognise that in practice consistency is not a simple matter. Officers are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer.

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

6.3 Transparency

Transparency means helping duty holders to understand what is expected of them and what they should expect from enforcing authorities. It also means making clear to duty holders not only what they have to do but also, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

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

6.4 Targeting

Targeting means making sure that contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it.

We have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty holder's operations.

¹ 'Duty Holders' - those who have a legal duty under health and safety law..
Health & Safety Enforcement Policy

The duty holder's management competence is important, because a relatively low hazard site poorly managed can entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place.

Any enforcement action will be directed against duty holders responsible for a breach. This may be an employer in relation to workers or others exposed to risks, the self-employed, owners of premises, suppliers of equipment, designers or clients of projects, or employees themselves. Where several duty holders have responsibilities, enforcing authorities may take action against more than one when it is appropriate to do so in accordance with this policy.

When officers issue improvement or prohibition notices, issue simple cautions or prosecute, we will ensure that a senior officer of the duty holder concerned, at board level, is also notified.

We will ensure resources are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. Action will be focused on the duty holders who are responsible for the risk and who are best placed to control it – whether employers, manufacturers, suppliers or others.

The Council follows a national priority rating system for inspections and interventions, and the HSE Local Authority (LA) Enforcement Code. (<http://www.hse.gov.uk/lau/la-enforcement-code.htm>)

6.5 **Accountability**

The Council is accountable to central government and the public for their actions. The Council has policies, service plans, procedures and service standards against which it can be judged, and an effective accessible mechanism for dealing with comments and complaints.

6.6 **Investigation**

The Council authorises officers to carry out the duties it has decided they are trained and competent to do. Current legislation, approved codes of practice and technical guidance will be available for reference.

The Council will use National Guidance and local priorities in deciding whether incidents, cases of ill health or complaints should be investigated.

We investigate to determine:

- Causes
- Whether action has been taken or needs to be taken to prevent recurrence and to secure compliance with the law

- Lessons to be learnt and to influence the law and guidance
- What response is appropriate to a breach of the law using the HSE Enforcement Management Model for serious breaches of legislation

To maintain a proportionate response it is neither possible nor necessary for the purposes of the HSW Act to investigate all issues of non-compliance with the law, which are uncovered in the course of preventative inspection or in the investigation of reported events.

We will carry out a site investigation of a reportable work related death, unless there are specific reasons for not doing so, in this instance the reasons for the decision will be recorded.

6.7 Prosecution

While the primary purpose of the enforcing authorities is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement.

Enforcing authorities must use discretion in deciding whether to bring a prosecution. Where the circumstances warrant it and evidence to support a case is available, enforcement authorities may prosecute without prior warning and recourse to alternative sanctions.

The decision to prosecute should have regard to the evidential and public interest tests set down in England and Wales by the Director of Public Prosecutions in the Code for Crown Prosecutors.

Prosecutions will only be considered when there is sufficient evidence to provide a realistic prospect of conviction and that prosecution would be in the public interest.

Subject to these two tests the Council will normally prosecute where one or more of the following apply: -

- Death was a result of a breach of the legislation.
- The alleged offence was extremely serious. This will take into account the seriousness of any actual or potential harm, and the general record and approach of the offender.
- 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.

- Work has been carried out without or in serious non-compliance with an appropriate licence or safety case.
- 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.
- Inspectors have been intentionally obstructed in the lawful course of their duties.
- False information has been wilfully supplied, or there has been intent to deceive, in relation to a matter which gives rise to significant risk.

Furthermore the Council will consider prosecution where, following an investigation or other regulatory contact, the following apply:

- The prosecution is 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.

If resources are limited the above have been placed in order of priority for action.

Where authorised officers are threatened or assaulted police assistance will be required, with a view to the prosecution of offender. We may request the Police to arrest individuals for obstruction or perverting the course of justice in relation to an investigation where there has been a death or serious major injury.

6.8 **Prosecution of an Individual**

Subject to the above the Council will identify and prosecute individuals if they consider that a conviction is warranted and can be secured. We will consider the management chain and the role played by individual directors and managers and will take action against them where it can be shown that the offence was committed with their consent or connivance or to have been attributable to neglect on their part. Where appropriate, disqualification of directors will be sought under the Company Directors Disqualification Act 1986.

6.9 **Simple Caution**

A simple caution may be used in cases involving first time low-level offences where the public interest can be met by a caution.

We will consider whether a caution is appropriate to the offence and the offender, and whether a caution is likely to be effective in the circumstances.

6.10 **Death at Work**

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

Our decisions on investigation and prosecution will follow the 'Work Related Deaths: A Protocol for Liaison' document.

This protocol has been agreed between the Health and Safety Executive (HSE) the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS). It sets out the principles for effective liaison between the Agencies in relation to work related deaths.

The police are responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges. They may involve the support of the Council and/or the HSE in the investigation.

We are responsible for investigating possible health and safety offences. If in the course of our investigation we find evidence to suggest manslaughter or corporate manslaughter it will be forwarded to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, we will normally bring a health and safety prosecution in accordance with this policy.

7. Publicity

Arrangements are in place on the HSE website 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. The Council will normally issue a press statement following conviction and inform the HSE.

We will keep a register of all Improvement and Prohibition notices which have been issued.

8. Action by the Courts

Health and safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences.

The Council when appropriate during a prosecution will draw the court's attention to the Court of Appeals guidance on the factors which should inform sentencing in health and safety cases, that fines must be large enough to reflect the seriousness of the offence (R v F Howe and Son (Engineers) Ltd [1999] 2 ALL ER).

Where the case is of sufficient seriousness, the Council will indicate to the Magistrates that the offence is so serious that they may refer it to be heard or sentenced in the higher court where higher penalties can be imposed. We will have regard to the Court of Appeal guidance before asking for a referral.

In our judgement Magistrates should always think carefully before accepting jurisdiction in health and safety work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence.

9. Section 3 of the Health and Safety at Work etc Act 1974

Section 3 of the HSW Act places general duties on employers and the self-employed towards people other than their employees. We will:

- Enforce section 3 in the key areas identified in our departmental plan and incident selection criteria
- Take account of HSE's priorities and, generally, give less priority to the enforcement of section 3 in areas outside these priorities.

10. Working with others

10.1 Regulators

There are many situations where work activities that may give rise to risks to health and safety are regulated by other authorities using legislation that may address circumstances which are also relevant to health and safety at work issues.

- We will, in accordance with the Regulators Code and the regulatory principles required under the Legislative and Regulatory Reform Act (2006), try to ensure that, wherever practicable, enforcement action by the health and safety enforcing authorities is effectively co-ordinated with that of other, relevant enforcing authorities to minimize unnecessary overlaps and time delays.

However, initial enquiries or information from other sources, may indicate that a breach of section 3 was or is the probable cause of, or a significant contributory factor to, the injury or risk complained of. In such circumstances, we and other enforcing authorities will consider investigating if:

- There was or is a high level of risk; or
- Enforcing authorities need to act/investigate in the interests of justice.

10.2 Other agencies/stakeholders

We will liaise with and bring areas of concern to the most appropriate body for advice and/or enforcement. Such bodies would include the County Council, the Health Protection Agency, fire service, adventure activities, licensing, OFSTED, Care Quality Commission, Defra and children's services.

When there is a lead or primary authority we will contact and if necessary, liaise with them:

- We will liaise before taking formal enforcement action, i.e. issuing notices, such as an improvement notice, or considering prosecution against a participating organisation, except -
- In the case of immediate danger
- After serving a prohibition notice - consultation will be as soon as is practicable after service
- When significant shortcomings are identified in a participating organisation's agreed policies or procedures which the Enforcing Agency believe ought to be challenged at a national level
- Following any on-site investigation of any death, major injury, work related ill health or dangerous occurrence reportable under RIDDOR 2013.

11. Deciding which authority will lead an investigation

There may be, however, a relevant health and safety interest in some aspects of a work activity covered by specific legislation when we would seek to agree with other authorities who should take the lead on an investigation (to avoid unnecessary overlaps and time delays) and where there may be a need to act alongside each other, which activities are most appropriately dealt with by each authority.

The following principles will be considered on who is best to lead on an investigation:

- Effectiveness: Which authority is best equipped, including appropriate powers to investigate the alleged risks?
- Capability: Is the other body capable of ensuring public safety? Does it have the enforcement powers necessary to do so?
- Health and safety expertise: Which body knows most about the risks concerned and the effective control measures?
- Economy: Is either body already inspecting/visiting the premises or activity in question? Can duplicate visits be avoided?
- Efficiency: Is health and safety enforcing authority involvement a good use of resources when considered against the scale of risk or level of public concern?

12. Scope and Application of Section 3 HSWA

12.1 For section 3 to apply:

- There must be a duty holder, either an employee or a self-employed person; and
- There must be a risk to the health or safety of a person who is not the employee of the duty holder or the self-employed duty holder themselves; and
- That risk must arise from the conduct of the duty holder's undertaking. An 'undertaking' means 'enterprise' or 'businesses. NB: Whether a particular activity is part of the conduct of the undertaking is determined by the facts of each case [R v Associated Octel Co Ltd (1996) 4 ALL ER 846]. Although not decisive in every case, whether the duty holder can exercise control over both the conditions of work and where the activity takes place is very important.

12.2 HSWA section 3 does not apply to:

- Welfare issues (such as the provision of toilets)
- Nuisance or amenity issues that have no health or safety implications (such as unpleasant smells arising from work activities)

- Poor workmanship, where trading standards or contractual remedies may exist, unless it has demonstrably compromised health and safety.

Generally we will not get involved in what may be essentially contractual or civil disputes except in cases where death or serious injury has occurred and initial enquiries, or information from other sources, indicate that a breach of section 3 HSWA was the probable cause or significant contributory factor. In such cases:

- Our established complaint or incident selection criteria should be used to determine if an investigation is required
- Inspectors should take into account the length of time since the work activity took place. Though it should not of itself deter inspectors from investigating, in practice the longer the time lapse, the more difficult it can be to collect evidence and the public interest arguments for action, weaken.

13. Enforcement in premises which the council own but do not occupy

The council cannot take action against itself nor should it be called upon to do so. In respect of premises in which we own but do not occupy:

- Carry out our enforcement policy and practice in exactly the same way we do in all our premises
- Ensure that the attention received is in accordance with the criteria applied to other duty holders.
- Where there is a potential conflict of interest we will discuss the matter with the HSE to determine the appropriate course of action.

14. Health and Safety Enforcement

At a visit an officer may leave a copy of 'what to Expect when a Health and Safety Inspector Calls'. This information is also available on the HSE website www.hse.gov.uk

An officer will consider the most appropriate course of action during routine inspections or following incidents/accidents or complaints.

In line with the policy and having regard to the Enforcement Management Model (<http://www.hse.gov.uk/enforce/emm.pdf>) the officer will use his judgement on what action to take that is namely:

- No action
- To give verbal and written warnings

- Serve improvement or prohibition notices
- Serve a simple caution
- To prosecute
- To seize an article or substance
- Any combination of the above

An officer, when using their judgement, will have regard to the legal requirement.

Sometimes the law is prescriptive – spelling out in detail what must be done. However, much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. Advice on how to achieve the goals is often set out in Approved Codes of Practice (ACOPs).

These give practical advice on compliance and have a legal status. If someone is prosecuted for a breach of health and safety law and did not follow the relevant provisions of an ACOP, then the onus is on them to show that they complied with the law in another way. Advice is also contained in other HSE or industry guidance material describing good practice. The HSE also have web-based tools to help businesses comply with the law. Following this guidance is not compulsory, but doing so is normally enough to comply with the law.

Neither ACOPs nor guidance material are in terms which necessarily fit every case. In considering whether the law has been complied with, inspectors will 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 counter them.

14.1 Information Given to Employees

The officer will consult and notify employees on matters that affect their health and safety and welfare. This information shall be factual and detail the action taken by the officer; it will not divulge confidential matters or trade secrets.

14.2 Verbal Advice and Letters

The circumstances when it is appropriate to use verbal advice and written warnings are: -

- The risk gap is minor
- The act or omission is not serious enough to warrant formal action
- From the individuals/business compliance it can be reasonably expected that the warning will achieve compliance
- There is no deliberate economic advantage being sought
- Confidence in the management is high
- The consequence of non-compliance will not pose a significant risk to health and safety

- Even where some of the above criteria are not met, there may be circumstances in which a warning will be more effective than a formal approach

A record will be made on file of verbal warnings or on the report of visit form.

The officer will tell the duty holder what to do to comply with the law, explain why and distinguish legal requirements from best practice. Inspectors will, on request, confirm any advice or legal requirements in writing detailing the above.

An officer will not specify a lower standard than that prescribed by legislation.

The officer will agree a timescale for compliance at the visit or will put a timescale for compliance in the letter.

14.3 **Serving Notices and Prosecutions**

Both taking a prosecution and serving a notice may be appropriate when:

- (a) A situation may be so hazardous that even with a prohibition notice, prosecution may result.
- (b) Prosecution is taken owing to the circumstance of an accident; a notice may be used to enforce the remedy.

Information will not be laid until after the appeal period for a notice has passed and any appeal has been heard.

14.4 **Improvement Notices**

Served when an authorised officer is of the opinion that there is a contravention of the law at the time of the visit or that there had been a contravention and that it is likely that the contravention will continue or be repeated.

An officer will consider: -

- The risk gap assessment.
- The seriousness of the legal contravention.
- Whether the employer appears deliberately unwilling to recognise their responsibilities and those who may be affected by their actions.
- Whether the duty holder has a history of non-compliance with verbal and written warnings.
- Whether deliberate economic advantage has been sought.

The officer will discuss the notice and if possible, resolve points of difference before serving it. The notice will say what needs to be done, why and by when. Timescales will be realistic.

Improvement notices will be served by authorised officers based on their opinion.

Failure to comply with the notice will generally result in court proceedings.

14.5 Prohibition Notices

These can only be issued when the authorised officer is of the opinion that there is or will be a risk of serious personal injury, which includes risk to health. They can be issued to have immediate or deferred effect.

There does not have to be a breach of a statutory requirement before a prohibition notice can be issued but an officer who thinks there has been should specify it in the notice.

In circumstances when a Prohibition Notice would be necessary but the person in control of the activity has assured the officer that he will remove the risk, this will be sought in writing.

The officer will, where practicable, discuss why he is serving the notice and take the employer's views into account. The legal implications of non-compliance will be explained. Where the notice is issued the officer will provide a written explanation of the reasons for the action.

14.6 Appeals

Every Notice will have written advice about how an appeal can be made and explains the time limits for appealing. It will also explain that an Improvement Notice is suspended pending the hearing of the appeal by an Employment Tribunal and that application may be made to the Tribunal for a Prohibition Notice to be suspended pending the outcome of an appeal.

14.7 Public Register

An electronic public register will be kept and maintained by the Council of notices served which affect the public who are not employees of that workplace in accordance with the Environment and Safety Information Act 1988.

Entries will be made 14 days after the time limit for appeal of the notice has passed providing no appeals have been made or 14 days after an appeal that has determined that the notice should not be cancelled.

14.8 Penalties for Health and Safety Offences are laid down in the Health and Safety (Offences) Act 2008 available online at:

15. Power to Deal with any Article or Substance which is a Cause of Imminent Danger

Articles or substances may be seized and rendered harmless if an Authorised Officer is of the opinion that it was the cause, or there is likely to be an immediate danger of serious personal injury.

16. Reviewing the Policy

The Health and Safety Enforcement Policy will be reviewed every 5 years or earlier if necessary.

17. Feedback and continual improvement

If you have comments that this policy has not been followed you can contact the Public Protection Manager. If you are still not satisfied you can use the local authority's formal complaint procedure.