



# **Buckinghamshire Council**

**Environmental Health  
Housing and Regulatory Services**

**HEALTH AND SAFETY ENFORCEMENT POLICY**

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## **Background**

The Environmental Health Service has a key role in ensuring that everyone who works, resides or visits Buckinghamshire, are protected from unsafe work practices and that the incidence of accidents and the causes of ill health are as low as possible.

The Health and Safety Executive (HSE) specifies the following elements as essential for a local authority to adequately discharge its duty as an enforcing authority:

- i. A clear published statement of enforcement policy and practice;
- ii. A system for prioritised planned inspection activity according to hazard and risk, and consistent with any advice given by the Health and Safety Executive (HSE) and Local Authority Unit (LAU);
- iii. A service plan detailing the local authority's priorities and its aims and objectives for the enforcement of health and safety;
- iv. The capacity to investigate workplace accidents and to respond to complaints by employees and others against allegations of health and safety failures;
- v. Arrangements for benchmarking performance with peer local authorities
- vi. Provision of trained and competent inspectorate;
- vii. Arrangements for liaison and co-operation in respect of the Primary Authority scheme.

This policy sets out the ways in which the Environmental Health Service will achieve Central Government aims and objectives, and policies in relation to ensuring that standards required by the Health and Safety at Work etc Act are met, advise businesses and employees on safety issues and ensuring that preventative health measures are adopted by businesses.

## **1.0 AIMS AND OBJECTIVES**

### **1.1 Aim**

It is the Council's aim to:

- Support and assist businesses to comply with legislation
- Provide consistent, accurate and up-to-date information aimed at providing protection to employees and customers
- Support and assist businesses to comply with legal obligations to ensure a safe environment

### **1.2 Objectives**

The Council will achieve these aims in the following ways:

- To protect people by providing information, training and advice, and undertaking enforcement in accordance with this policy and Government guidance;
- Develop partnerships and approaches to service delivery to enhance services, increase impact and reduce costs through innovation;
- To support businesses to adopt best practice and to recognise their contribution towards economic growth and social benefits;
- Develop new ways to establish and maintain an effective health and safety culture in a changing economy, so that all employers take their responsibilities seriously, the workforce is fully involved and risks are properly managed;
- Participate in the Primary authority scheme;
- Exemplify our own corporate health and safety practice in managing our resources.

### 1.3 Service Delivery

The service will be delivered through:

- i) Risk-based targeting of inspections of high risk businesses based on national and local intelligence, with appropriate follow-up action;
- ii) Project based intervention programmes based on the HSE's key priority areas and local intelligence;
- iii) Investigation of complaints with appropriate follow-up action;
- iv) Investigation of accidents with appropriate follow-up action;
- v) Suitably trained and experienced officers who are effectively monitored;
- vi) Provision of information to businesses about legal requirements, good practices and what to expect of the inspecting officer/authority;
- vii) Promotional activities to inform and encourage high standards in businesses.

### 1.4 Priorities

It is recognised that resources are finite. Therefore, it is particularly important that resources for health and safety are targeted at activities that pose the greatest risk and that will allow for the most effective and efficient use of resources in delivering outcomes.

Priority will be given to targeting those activities that pose the greatest risk to employees and members of the public. In particular, priority will be given to those issues within the HSE Strategy identified as the greatest causes of accidents within the local authority enforced sector. In setting priorities and the local authority's work plan, due regard will be given to the National Local Authority Enforcement Code published by the HSE. This will consist of having regard to national priorities and sector specific strategies set by the HSE; local priorities informed by local intelligence, workplace accidents and complaints, Matters of Evident Concern and Matters of Potential Major Concern; and Primary Authority inspection plans.

These key priorities will determine the approach taken towards individual inspections and the overall intervention programme itself. Officers will focus on these key priorities during interventions in the following ways:

- the correct and uniform identification of high-risk areas with particular attention being given to the key priorities during inspections and as a result of complaint and accident investigation and to concentrate efforts to reduce these risks;
- ensuring compliance with the law;
- engaging in those promotional activities for businesses and employees, which are most likely to foster improved health and safety, and;
- working with other agencies to improve health and safety standards either through enforcement or promotional activities.

## **2.0 STANDARDS FOR HEALTH AND SAFETY RELATED WORK**

### **2.1 Authorisations**

The Council will set standards for the qualifications, experience and competence of its officers.

In the context of the Health and Safety at Work etc Act 1974, an authorised officer's powers include the inspection of premises, the examination, sampling and seizure of substances, articles and equipment, the service of notices and taking emergency action. Appointed inspectors will be authorised in accordance with Section 18 guidance issued by the HSE.

The Buckinghamshire Council [Constitution](#), reviewed on 1 April 2020, delegates to the Corporate and Service Directors all executive and non-executive powers and duties relevant to their areas of responsibility. The Service Director has delegated their powers to the Head of Environmental Health and Trading Standards.

#### **2.1.1 Inspections**

Inspection of premises will only be undertaken by officers who are suitably qualified, experienced and competent in accordance with the requirements of Section 18 Guidance. This will equally apply to those employed on a contract basis.

Newly appointed officers or currently employed officers who are extending their duties will not be authorised unless they possess the appropriate competencies, skills, qualifications and experience to undertake their duties and that they have undergone a period of structured training in accordance with Section 18 Guidance. The assessment of competency etc. will be undertaken by their Team Leader in consultation with the Environmental Health Manager (Commercial).

#### **2.1.2 Enforcement Notices**

Service of Improvement Notices will only be undertaken by qualified officers with experience in health and safety law enforcement, and after consultation with their Team Leader or Environmental Health Manager (Commercial).

The service of notices by hand will be by any person who is capable of explaining the meaning and legal status of the notice. Notices served by other methods will be in accordance with current legal guidance.

Officers will be authorised to serve Prohibition Notices in accordance with the standards within the Policy. Whenever possible, he/she will be accompanied by another authorised officer to corroborate the proceedings and will consult with their Team Leader or Environmental Health Manager (Commercial). If this is not possible, then the Team Leader or Environmental Health Manager is to be notified as soon as possible after service.

### **2.1.3 Seizure and Detention**

Officers will be authorised to inspect, detain and seize articles and equipment subject to experience and competence.

All officers will be assessed for the necessary practical skills, experience and competency by the relevant Team Leader.

### **2.1.4 Competency**

The Environmental Health Manager (Commercial) and Team Leaders have been given specific responsibility for health and safety enforcement matters and managing the health and safety service. This will be in accordance with a documented inspection monitoring procedure.

Officers will carry out inspections and exercise their powers in accordance with the Health and Safety at Work etc. Act, associated Regulations and accompanying Codes of Practice and within the restrictions of their authorisation.

The Team Leaders (or in their absence, the Environmental Health Manager (Commercial)) will be responsible for the supervision and training of officers and for the maintenance of auditable records. A training and development plan will be used to establish current qualifications and competencies and to identify future training needs in order that officers can effectively carry out their duties.

Recommendations will be made by the Environmental Health Manager (Commercial), to the Head of Environmental Health & Trading Standards in respect of the powers to be given to officers and the category of premises to be inspected.

A list of the officers, their powers and the nature of premises which the officer may inspect, will be maintained and regularly updated together with records of training.

### **2.1.5 Authorisation of Persons with Expert Knowledge**

Under Section 20(2) (c)(i) of the Health and Safety at Work etc. Act 1974 an authorised officer may take another person with them on the inspection e.g. a person with an expert knowledge of the type of activity being inspected. Authorisation of such persons is necessary to ensure the right of entry to the premises concerned. Where it is necessary to be accompanied by another person, an officer will ensure they are duly authorised in writing and empowered under Section 19 to perform such activities as are necessary under Section 20 of the Act. Such authorisation is given under the authority of the Head of Environmental Health & Trading Standards.

## **2.2 Guidance**

The authority will have regard to Approved Codes of Practice and guidance issued by the Health and Safety Executive, other advice issued by the Government and advice issued by Health and

Safety Executive/Local Authority Enforcement Liaison Committee.

### **2.3 Uniformity**

The Authority acknowledges the need to act in a consistent and uniform manner and advocates a common-sense approach to the selection of enforcement action and activities.

The following areas are all considered important in achieving uniformity. These are detailed in an inspection monitoring procedure:

- i) the awareness, adherence to and review of the health and safety policy document and further development of office procedures;
- ii) training, qualifications, supervision of staff. Regular practical training and update sessions will be essential to ensure uniformity;
- iii) cross monitoring visits of staff and monitoring of letters, inspection records and notices by senior officers;
- iv) use of the Primary Authority Partnership Scheme, specified in HELA Guidance and by the Office of Product Safety and Standards;
- v) liaison with local health and safety groups/adjoining authorities. Use of joint training initiatives. Co-operation and joint working on uniformity issues;
- vi) compliance with relevant Codes of Practice and guidance from LAU;
- vii) Consistent application of the Enforcement Management Model (EMM) when making enforcement decisions.

### **2.4 Advice to Businesses**

The authority is committed to ensuring that businesses are aware of their legal obligations and to supporting businesses in achieving best practice by providing information and guidance to assist businesses. In particular, it is recognised that small businesses do not have access to specialist health and safety knowledge or information and so initiatives will be developed to target information for these businesses within the county. The authority will be committed to helping small businesses.

Where opportunities arise to provide advice and guidance to businesses over and above that required to ensure legal compliance, then a charge may be made.

- i) The Council's website will be, along with relevant signposting to government websites, the primary source of information to assist businesses with interpretation of legislation or good practice. The Council also provides services for ethnic minority groups through 'Language Line', translation services. Where the Council does not provide the service itself, information will be given to businesses about other providers.
- ii) A chargeable advice service may be available to new and existing businesses to support them in achieving high standards of safety and compliance.
- iii) Businesses will be supported and encouraged to participate in the Primary Authority partnership scheme where applicable.

- iv) Where there is sufficient demand and resources allow, occasional talks will be given to businesses. Charges to cover costs may be made.

## **2.5 Advice to Members of the Public**

The Council's website will provide relevant signposting to government websites on safety issues. The authority will participate in national health and safety activities and local events. Talks to voluntary organisations and groups may be given free of charge where resources permit.

## **2.6 Conduct**

Inspecting officers will at all times act and dress in a professional manner. Protective clothing and any other necessary personal protective equipment (PPE) will be worn that is appropriate to the premises being inspected and equipment will be maintained and calibrated where appropriate.

Officers will not act in such a way as to pose a risk to safety or health either to themselves, employers and employees and members of the public.

## **2.7 Information Sharing**

Where the legislation permits, the authority will share information via agreed secure mechanisms with other regulatory agencies, internal departments and local authorities about businesses to help target resources and activities and to minimise duplication in relation to, for example, concerns of fraud, immigration and staff welfare, illicit products and trading and food crime.

The authority will share information about businesses with the primary authority as appropriate and with other authorities when acting as a Primary Authority. Where third parties request copies of inspection reports, these will be provided in a redacted format in line with requests for information under the Freedom of Information Act.

Officers will co-operate with any requests for assistance and/or information from the Health and Safety Executive or other enforcement bodies or local authorities. Information on businesses trading within the Buckinghamshire Council area will be shared with enforcement agencies and internal departments.

Data is held on our respective legacy data management systems. The databases are under review and will be combined into a single database over the coming years.

## **3.0 HEALTH AND SAFETY INTERVENTIONS**

### **3.1 Frequency of inspections**

The National Local Authority Enforcement Code and HELA guidance note LAC 67/1 (Rev11) 'Advice to Local Authorities on Inspection Programmes and a Rating System' provide advice as to the prioritisation of inspections. Proactive inspection will be used only for the activities identified within the HSE's published list of higher risk activities or where there is local intelligence that risks are not being effectively managed. It is recognised that 'inspection' may not necessarily be the most effective means of dealing with a particular situation and that other



types of interventions may be more suitable. The current guidance is that *'there should be no inspection without a reason'*.

Risk ratings alone will not be used to determine the use of a particular intervention or to decide an intervention frequency. However, whilst it is likely that premises rated Category A have been rated such because they have been judged as not managing their risks effectively, sufficient evidence will be required to justify the risk rating; confidence in management considered in isolation is not sufficient to justify an A rating.

In recognition of the HSC/HELA Strategy priorities, inspections will be programmed on a project based basis. Each project will be identified in relation to the impact it will have in addressing the key priorities and will either be a cross-cutting project targeting a single priority e.g. slips and trips across a wide range of businesses or will be sector specific targeted at those activities that have been identified as being high risk e.g. warehousing, or those sectors where inspections will address a number of the key priorities at the same time e.g. residential care homes.

This project based approach will provide for a more efficient use of resources and be more effective in targeting the priorities that have been identified as giving rise to the highest number of accidents. Statistical data, both nationally and locally, will be used to identify those activities which require the most attention.

Category B1, B2 and C premises will not form part of the inspection programme and so will not be subject to any proactive interventions unless they come within one of the priority subject areas.

Revisits to check on outstanding issues will be made where necessary. Where health and safety interventions coincide with food hygiene inspections, a joint inspection may be undertaken. All visits will be recorded on the computer-based system and documents scanned to the corporate Electronic Document Management System.

## **3.2 Inspection Procedure**

### **3.2.1 Approach**

The authority will work to standards set within HELA Guidance and internal inspections procedure documents.

The main purpose of inspections is to identify potential risks to employee's and the public's safety or health and to ensure that the business understands the risks and has put the necessary measures in place to minimise them. When undertaking an inspection, officers will pay particular emphasis to risk assessment based management systems and the HSE key priorities.

A systematic approach to risk assessment will be adopted. Where businesses have identified their significant risks and have introduced controls, the inspection will focus on the accuracy of the assessment and on the effectiveness of the controls. Written assessments will normally be expected in high risk or complex businesses. Businesses with less than 5 employees will not be expected to have written assessments.

Where no assessment by the business can be demonstrated the inspection will focus on the officer's own assessment and examination of controls.

The whole of a premises may not necessarily be inspected at each inspection; those areas of greatest risk will be given priority. Officers will have regard to the key priorities and the focus will be on those which are significantly pertinent to the activities of the business being inspected.

When a project-based intervention has been undertaken and matters of evident concern are identified, steps will be taken to rectify the issue, either using informal means or by enforcement. A project-based intervention may be followed up by a more detailed inspection of the whole business when standards of health and safety are found to be poor or there are issues of significant concern.

Computer records will be updated following every visit.

### **3.2.2 Communication**

Every inspection (including those where no defects are identified) will result in a written report to the employer. Copies of the report will be sent to the manager or other relevant persons, including employee and safety representatives.

A standard format will be used. The report will cover the important issues noted during the inspection in priority order and will clearly distinguish between legal requirements and recommendations. It will give details of the person carrying out the inspection, date, time, the areas inspected and the procedure if the proprietor disagrees with the issues raised in the report.

Good communication between inspector and employer is essential wherever possible, including ensuring that the purpose and scope of an inspection is understood and the “works” needed following the inspection with an agreed time limit. The impact of the advice should be considered so that it does not impose unnecessary burdens upon businesses.

The role of Safety Representatives in preventing injuries and ill health at work and promoting good standards of health and safety in the workplace is recognised. Therefore, their role will be promoted and officers will effectively consult and communicate with them where appropriate.

Section 28(8) of the Health and Safety at Work etc. Act places a duty on inspectors to provide factual information where it is necessary to do so for the purposes of assisting in keeping employees or their representatives informed about matters that affect their health and safety. This factual information will also be provided to employers. This will include correspondence, enforcement notices, results of sampling and monitoring and intentions to prosecute.

### **3.2.3 Timing of Inspections**

Inspections will be carried out at all reasonable hours. It is recognised that some businesses operate outside normal office hours of work and so the timing of interventions will take this into account. Interventions may be by appointment to facilitate better communication with the most appropriate person at the business. Notice may not be given where poor standards are likely to be found, the nature of the project work dictates an alternative approach or where complaints or accidents are being investigated.

Revisit dates may be notified in advance as an aid to ensuring that works are completed and to facilitate further discussions with the employer. Appointments may also be made when there is

a need to discuss specific issues.

Where alternative dates for visits are requested by a business the inspector may agree, if suitable justification is given, and the inspector is satisfied that the purpose behind the request is not to conceal a major risk. However, this is at the officer's discretion.

#### **3.2.4 Revisits**

Revisit inspections will be arranged to check on matters raised in an inspection (and any obvious extra defects) where there are *significant* contraventions and/or serious risks to public health and to check on compliance with statutory notices. They will not turn into a further full inspection except where a major risk is identified. Where significant breaches of regulations have been identified, the revisit should whenever practicable be undertaken by the same officer who undertook the initial visit particularly where formal notices have been served. After initial inspections, employers must be made aware that a revisit will be made and appropriate dates discussed.

Revisits will not always result in a written report (unless further work is required) to the employer although the employer will always be advised of the outcome verbally, and in writing if requested. However, detailed records of revisits will be made and kept on the property database. Clear records will be maintained of formal and informal notices which have been complied with.

### **4.0 ENFORCEMENT POLICY**

This section sets out the policy relating to enforcement of health and safety legislation. It details the general principles of enforcement and embraces those set out in the 'Regulators' Code' issued by the Better Regulation Delivery Office and Section 18 Guidance issued by the HSC.

More specific procedures concerned with statutory notices, emergency action, formal cautions and prosecutions are detailed in enforcement procedures. These procedures take account of all Codes of Practice and guidance issued by HSE and 'The Code for Crown Prosecutors'.

Enforcement officers by necessity as professional officers have considerable discretion in decision making and initiating enforcement action. Such action can range from informal advice, information and support through to formal enforcement mechanisms, including the use of statutory notices and prosecution.

This part applies to all dealings, formal and informal, between officers and businesses, all of which contribute to securing compliance with the law. It will provide policy standards, aid professional judgements and decision making and ensure both consistent and effective enforcement.

#### **4.1 Principles of Enforcement**

The core expectation for those we deal with, quite reasonably, is for us to be professional, fair, co-operative and consistent in our approaches. Businesses and the public also expect local authority actions to result in the remedying of potentially risky situations and for those guilty of serious offences to be adequately punished.

We will adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging businesses to understand and meet regulatory requirements more easily; without imposing unnecessary additional cost;
- assessing whether other social, environmental and economic outcomes can be achieved by less burdensome measures, and
- responding proportionately to regulatory breaches.

Enforcement should be informed by the principles of **proportionality** in applying the law and securing compliance; **consistency** of approach; **targeting** of enforcement action, **openness** about how we operate and what businesses may expect and **helpfulness** in providing advice and assisting with compliance.

Appendix 1 sets out the standards of service businesses should expect to receive.

It will be expected that enforcement officers, when making decisions and communicating with businesses, will follow these principles, together with relevant codes of practice and guidance. The Primary Authority Partnership scheme will be used where applicable.

When considering formal action, officers will perform an assessment in accordance with the Health and Safety Executive's Enforcement Management Model (EMM). Where the proposed enforcement action deviates from the EMM, a management review will be undertaken by the Team Leader.

Any departure from this must only occur when the following criteria are complied with:

- i) in exceptional circumstances;
- ii) where actions are capable of justification;
- iii) where there has been full consultation with the Team Leader or Environmental Health Manager (Commercial).

In exceptional circumstances when officers become aware that they are considering measures which may be inconsistent with those adopted by other local authorities, formal action should be delayed to allow the matter to be discussed with other regulatory partners e.g. the local liaison group. Reference will also be made to the Primary Authority where appropriate. However, this would not be applicable in cases where there is a serious risk to public health.

Any sanctions or penalties being considered should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

This policy will be reviewed periodically in response to new legislation and guidance issued by central government and HELA.

#### **4.1.1 Proportionality**

All enforcement actions and advice must be proportional to the risks posed to the public and employees and the seriousness of any breach of legislation.

When considering enforcement action, consideration should be given to the cost of measures required to reduce the risk weighed against the benefit to be gained by reducing the risk.

In addition, there should be a staged approach to enforcement action with increasing degrees of enforcement as management of businesses fails to respond to previous requirements. Officers should provide an opportunity for dialogue in relation to the advice, requirements and decisions.

The only exceptions to the above approach would be where a serious and/or imminent risk to safety or health exists.

The staged approach to enforcement is further detailed in enforcement procedures.

#### **4.1.2 Consistency**

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

Businesses expect consistency from enforcing authorities in advice given, the use of statutory notices, decisions on prosecution and responses to complaints.

It is recognised however, that in practice it is not simple, due to the wide range of variables faced. Therefore, it is expected that officers will use their professional judgement and exercise discretion, in conjunction with this policy, when coming to a decision on appropriate action.

The following arrangements will be in place in order to promote consistency of approach:

- i) officers will perform validation exercises relating to joint inspections on an annual basis;
- ii) Team leaders will periodically accompany all officers on an inspection to assess the consistency of approach between officers;
- iii) officers openly discuss cases at team meetings and/or with Team leaders to provide a consensus of opinion;
- iv) all formal action will be 'signed off' by the Team leaders and where prosecution is being considered, by the Environmental Health Manager (Commercial) and Head of Environmental Health;
- v) correspondence and file records will be checked and monitored on a regular basis;
- vi) where inconsistencies arise, appropriate training/coaching will be given by the Team Leaders;
- vii) in the event of differences of opinion or where there is a need for clarification, approaches will be made to other regulators e.g. the Health and Safety Liaison Group and the Primary Authority where applicable;
- viii) officers will participate in inter-authority consistency exercises and change

- ix) working practices, if necessary, to achieve consistency; Buckinghamshire Council will take an active role in the Health and Safety Liaison Group;
- x) reference will be made to appropriate central government guidance;
- xi) reference will be made to appropriate guidance issued by a Primary Authority.

#### **4.1.3 Targeting**

Inspections and enforcement action will be targeted primarily at those activities giving rise to the most serious risks or where hazards are least controlled and that action is focussed on those responsible for the risk and who are best placed to control it.

The prioritisation of inspections will be based on guidance issued by the HSE and informed by the HSE Strategy.

#### **4.1.4 Openness**

Enforcement officers will help businesses to understand what is expected of them (and what would not be expected) and what they should expect from the enforcing authorities.

Confirmation of all work (initial inspections, revisits and complaints) will be given in writing to business managers and as appropriate to head offices. Information will clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken and the reasons for these.

There will be a clear distinction between legal requirements and good practice recommendations (either verbally or written).

Where notices have been served and are on a Public Register, this will be available for viewing free of charge.

If formal requests for information are received from a third party, they will be handled in line with requests for information under the Freedom of Information Act.

Businesses will be made aware the Corporate Complaints Procedure when appropriate, the informal appeals procedure to the Environmental Health Manager (Commercial) in the first instance and any statutory appeals procedure against enforcement. This is to be included in correspondence to businesses following inspections.

#### **4.1.5 Helpfulness**

The principle is to actively work with businesses to advise on and assist with compliance wherever possible. To this end, officers will identify themselves by name and provide a contact point and telephone number for further dealings. Businesses will be encouraged to seek advice/information; information will be freely available on the Council's website with links to those produced by central government. When appropriate and resources permit, training courses/seminars will be provided for businesses on specific issues.

#### **4.2 Prosecution of Individuals**

Subject to the general provisions of this Enforcement Policy, recommendations for prosecutions

of individuals will be made if warranted. The role played by individual directors and the management chain will be taken into account, particularly when an investigation reveals that the offence was committed with their consent or connivance or to have been attributable to neglect on their part.

### **4.3 Enforcement against Employees**

Enforcement action may be taken against employees and others, including managers, company officers etc. under the Health and Safety at Work etc. Act 1974, Sections 7, 8, and 37(1). Prosecution will only be considered against the employee if they have been warned before, either by an authorised officer or by the business, or the employer can demonstrate that they have taken all reasonably practicable steps to ensure that safety devices were in place and the offence by the employee was flagrant.

### **4.4 Work Related Death**

Any authorised officer called upon to investigate a fatality should ensure that early contact with the bereaved family is made and/or arrangements made to meet the bereaved as soon as they wish in order to explain the local authority's roles and responsibilities and to provide them with relevant information. The Team Leader or Environmental Health Manager (Commercial) will normally take responsibility for conducting the meeting with the bereaved family and act as the Family Liaison Officer, supported if necessary, by another officer but not necessarily the investigating officer. This should take place as soon as possible, bearing in mind the convenience and wishes of the family. Officers should also keep relatives informed of the progress and outcome of the investigation.

Where there has been a breach of the law leading to a work related death, consideration will be given whether the circumstances of the case might justify a charge of manslaughter. To this end, the investigating officer will liaise with the Police, Coroner and the Crown Prosecution Service (CPS) in accordance with 'Work-Related Deaths – A Protocol for Liaison' and 'Practical Guide'. If they find evidence suggesting manslaughter, this will be passed to the Police or where appropriate, the CPS. If the Police or CPS decides not to pursue a manslaughter case, the local authority should consider prosecution under health and safety legislation.

## **5.0 POLICY WITH RESPECT TO COMPLAINTS**

### **5.1 Background**

Requests for service in respect of health and safety either relate to:

- i) complaints received from employees or safety representatives concerning workplace issues;
- ii) complaints received from members of the public or visitors to businesses concerning the impact of a business' activity on others;
- iii) requests for advice and information.

The purpose of investigating complaints is:

- i) to identify possible causes for and to resolve any problems which pose a risk to health and safety;
- ii) to substantiate complaints and to provide a service to the public;
- iii) to provide information to the industry in order to raise and maintain standards;
- iv) to perform a duty of enforcement and;
- v) to prevent further complaints.

Complaints that relate to issues that may pose a serious and/or imminent risk to health and/or safety are considered of utmost importance and therefore require an immediate response upon notification in order to investigate as thoroughly as possible. In cases involving issues that do not pose a serious and/or imminent risk to health and/or safety, these will be reviewed within the departmental response time of 3 working days. Officers will conduct their investigations and visits in accordance with previously detailed policies and guidance.

All investigations shall be performed in accordance with HELA guidance and Codes of Practice and the Primary Authority principles shall prevail throughout the investigation.

Where it is determined that the HSE is the responsible enforcing authority, then appropriate liaison and transfer of the complaint will take place.

Enforcement action will be in accordance with the Enforcement Policy.

## **6.0 POLICY WITH RESPECT TO ACCIDENT INVESTIGATION**

Local authorities are under a duty to investigate accidents that are notified to them under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.

The purposes of investigating an accident are:

- i) to identify the cause of the accident, to make the situation safe and to prevent further accidents occurring;
- ii) to identify whether there have been any breaches of legislation;
- iii) to provide information to the industry in order to raise and maintain standards;
- iv) to inform local and national statistics and hence the planned inspection priorities.

### **6.1 Decision to Investigate**

In considering whether to investigate a notified incident, reference will be made to the HSE Incident Selection Criteria. All accidents which occur at premises enforced by the local authority and involve one or more of the following shall be investigated by an authorised officer:

- i) the work-related accident results in a fatality, except when the circumstances indicate that an investigation is inappropriate i.e. death from natural causes unrelated to a work activity;
- ii) the accident results in a serious injury or a case of ill health or a dangerous occurrence;
- iii) the accident results in a serious injury or a case of ill health to a member of the public except accidents when it is clearly unrelated to a work activity;
- iv) there is a degree of public concern and the application of the Enforcement



- Management Model would give an initial enforcement expectation of a notice or prosecution;
- v) the accident is related to local special surveys or campaigns or to the HSE key priority areas;
  - vi) a serious breach of the law is involved;
  - vii) an accident is a recurrence or is likely to recur;
  - viii) a young person or child is involved (under the age of 18);
  - ix) the accident indicates a more general management failure;
  - x) a complaint has been made regarding an accident that has occurred which meets the above criteria.

The initial decision whether to investigate and how far to carry that investigation will depend upon a number of factors. The following will be taken into consideration when deciding to investigate:

- i) severity and nature of the accident;
- ii) seriousness of the breach;
- iii) track record of the duty holder;
- iv) the relevance of event to a wider range of premises;
- v) practicality of achieving a satisfactory outcome;
- vi) legal considerations;
- vii) resource constraints.

In addition to informing the decision for the initial investigation, these factors will also determine the approach to be adopted and the extent of the investigation itself. This approach will ensure that resources are effectively targeted at the most serious accidents and which will result in the greatest effect on improving standards of health and safety.

## **7.0 POLICY WITH DISCLOSURE OF HEALTH AND SAFETY INFORMATION**

### **7.1 Introduction**

The purpose of this policy is to describe practices in dealing with the disclosure of information under legislation and good practice note 'Open Government: a Good Practice Note on Access to Local Authority Information'. The policy is intended to ensure consistency with the policy and practices of the Health and Safety Executive (HSE).

The good practice note requires local authorities to draw up and follow their own policy statements. This policy document seeks to fulfil that aim. It does not seek to replace any statutory requirements on disclosure where the law requires the local authority either to withhold or to disclose. Local authorities and the HSE must follow the same legislation on disclosure of health and safety information namely:

- i) Section 28 of the Health and Safety at Work etc Act 1974;
- ii) Environmental Information Regulations 2004;
- iii) Environment and Safety Information Act 1988;
- iv) Freedom of Information Act 2000.

This policy is fully retrospective, i.e. it applies to information acquired by Buckinghamshire Council before the legislation came into effect.

## **7.2 Freedom of Information Act 2000**

On 1<sup>st</sup> January 2005 the Freedom of Information Act 2000 (FOI Act) created two important rights of access for any person making a request for information to a public authority:

- To be informed by the public authority whether it holds the **information** of the description specified in the request; and
- If that is the case, to have the **information** communicated to them.

The Council has published a Freedom of Information Act Publication Scheme that will be followed should requests for information be made.

## **7.3 Section 28 of the Health and Safety at Work etc Act 1974**

Section 28 of the Health and Safety at Work etc Act has been amended to bring restrictions on giving information into line with FOI Act.

Subject to the exemptions in the FOI Act (or EIR exemptions), the local authority can release information:

- proactively - because it is in the public interest for us to put that information into the public domain, or
- in response to a request under the FOI Act or the Environmental Information Regulations 2004

We are not required to disclose information when the public interest for making the information available is outweighed by a greater public interest in protecting it. However, applying the public interest requires us to exercise our skill and judgement and document our reasoning and decision making.

## **7.4 Environmental Information Regulations 2004**

Buckinghamshire Council recognises that these Regulations impose responsibilities in respect of the environment, environmental information held and the release of such information, subject to exempted classes of information.

Buckinghamshire Council further recognise that the Regulations disapply all other statutory provisions on disclosure where those other provisions conflict with the Regulations. Section 28 in accordance with this will not normally apply to requests made for environmental information as defined in the Regulations.

For the purposes of the policy, environmental information is regarded as information relating to:

- i) the state of any water, air, flora, fauna, soil, natural site or other land;
- ii) any activities or measures (including activities that give rise to noise or other nuisance) which adversely affect or are likely to adversely affect anything in i);
- iii) any activities or other measure (including environmental management programmes) which are designed to protect anything in i).

This policy will not require the release of information about human health and safety except

where human health and safety have been, or could be, affected through environmental media (e.g. air, water or soil). For example, information that workers were directly harmed in the manufacture of a substance is not releasable under the Regulations as environmental media are not involved. However, if fish were harmed, or could have been harmed, because a substance got into the food chain, such information would have to be released on request as environmental media are involved.

Local Authorities are within scope of the Regulations as we have environmental responsibilities and hold environmental information. We may obtain environmental information in carrying out any of our functions or in any area of our responsibilities and such information is subject to the requirements of the Regulations. For example, information could be obtained on noise, Legionnaires' disease, ionising or non-ionising radiations and may be disclosable to the extent that it relates to the environment.

## **7.5 Environment and Safety Information Act 1988**

In order to comply with the provisions of the Act Buckinghamshire Council will maintain public registers of information on improvement or prohibition notices having public safety or environmental implications.

The register entries will include brief details of the breach of legislation and action required and will consist of the first page of the notices.

No charge will be raised for the inspection of the register.

## **7.6 Enforcement Notices, Inspection Reports and Convictions**

### **7.6.1 Enforcement Notices**

Information on only some notices is on the public registers kept under the Environment and Safety Information Act 1988. Under this policy Buckinghamshire Council will also provide enquirers with information on any other health and safety notice it has served. The information provided will include the name and address of the premises, the date of the notice, the statutory breach and the date by which the breach must be remedied.

### **7.6.2 Inspection Reports**

Requests for inspection reports will be considered in accordance with the Council's FOI Publication Scheme and the Environmental Information Regulations 2004.

### **7.6.3 Convictions**

Buckinghamshire Council may hold on public registers the names and addresses of firms/individuals convicted of breaches of health and safety legislation.



## **Appendix 1. Service Standards**

### **Our Commitment**

- We will give you verbal feedback at the end of each inspection and aim to give you written confirmation either at the time of the inspection or within 5 working days.
- We aim to respond to any request to the department within 3 working days. All correspondence is reviewed shortly after receipt to determine the type of response required and if it relates to something which must be dealt with as a priority. We will always provide a contact name, email and number if requested.

### **What to do if you are unhappy with the service?**

The Council has a Corporate Complaints Procedure which can be found at:

[Give feedback on our services | Buckinghamshire Council](#)

These pages explain how to make a complaint against any Council Service.