

HELA

3rd March 2008

Report from the HELA Task and Finish group

On Enforcement

This paper is set out using the Terms of Reference which the Task and Finish Group on Enforcement agreed at their first meeting on 26th June 2007. Sections (1-5) cover the main evidence identified by the group and the action the group has taken. The final section (6) covers the legacy that has been created, the future of any outstanding work and the action that HELA is asked to take.

The group is chaired by Mark Du Val from LACORS and its members are:

- Tony Macklin (City of London Corporation)
- Andrew Bradley (London Borough of Merton)
- Dave Dier (Merthyr Tydfil BC)
- Colin Giddings (Brighton and Hove City Council)
- Sharon Egan (HSE – South East Partnership and Communications Team)
- Jane Bride (HSE – South East Partnership Liaison Officer)
- Paul Kloss (HSE - Local Authority Unit)
- Laurence Monaghan (HSE – Enforcement Programme)
- Sarah Bull (LACORS)

1. Consider the consistency of LA enforcement activity with the HSC's Enforcement Policy Statement (EPS) and Code for Crown Prosecutors;

Evidence:

HSE commissioned Greenstreet Berman Ltd to undertake a research report titled "Evaluation of EPS and Enforcement action" <http://www.hse.gov.uk/research/rrhtm/rr519.htm>. Findings from this research identified that:

- 87% of LA enforcement officers were aware of the EPS
- 83% of LA enforcement officers were aware of the EMM – whilst LAs have used the EMM for one year compared to 2-3 years (dates from 2006) by HSE they make more use of it. This is possibly explained by the finding that LAs are more likely to serve notices after seeking technical, legal or policy guidance and less likely to serve notices immediately during visits. LA inspectors seek more guidance and have made more use of the EMM despite its relatively recent introduction to LAs.

- that with a few exceptions the EMM has helped achieve the principles of proportionality (56%), transparency/ accountability (71%) and consistency (58%) especially amongst LAs – with most enforcement perceived as proportionate and fair by duty holders. It also identified that the EMM is used as a decision making tool and a training tool for junior enforcement officers.
- It is also important to assess the general views of business in relation to consistency of enforcement. A positive view came from the Greenstreet Berman report in relation to consistency of current enforcement with the EPS which states on page 30 that Duty Holders generally agreed enforcement was consistent with the EPS. When dutyholders suggested improvements, their 4th suggestion (of 10) was that HSE/LA inspectors should be more consistent in deciding when to enforce.

As part of the Enforcement Programme a regulatory decision making audit was completed. The audit reviewed 126 incident investigations across HSE and LAs. The peer review panel supplied the following information:

- There was consistency between the Panel and individual investigating inspectors over the identification of cause and preventative measures needed;
- The panel reached the same conclusion of appropriate action (or amended their conclusion after reading the inspectors justification) as the investigating inspectors in 108 of the incidents;
- Of the 18 cases where the Panel did not agree with the actual action taken by the inspector, 16 were where the Panel considered enforcement action should have been taken, of these the Panel considered prosecution would have been appropriate in 12 cases;
- The panel found no examples of inappropriate enforcement (no cases of the 'over-zealous' inspector);
- The injured person was not always contacted, contrary to agreed procedures;
- The EMM was not applied as widely as might be expected to reach a decision on appropriate action to take;
- Most accidents were on the face of selection worth investigating. However, when the full facts (including dutyholder action already taken) were taken into account, only about half of the incidents investigated secured improvements as a result of the enforcing authority's investigation.

Specific to LAs, the results from the regulatory decision making audit found that in 2 instances the panel did not agree with the final decision made by the LA officer.

Action

The group recommends a message from joint chairs of HELA clarifying the role of enforcement in relation to health and safety.

New webpages developed by the enforcement programme link together the enforcement guidance that is available. <http://www.hse.gov.uk/enforce/index.htm> LACORS and LAU will be publicising these new webpages on the HElEx and LACORS website.

LACORS and LAU will share widely work going on in the partnership teams in relation to enforcement issues – see Annex 3.

2. Consider differences in enforcement practices among LAs, and differences in incident selection between LAs and HSE, and assess the outcomes of these differences on the use of formal enforcement among LAs;

Evidence

Annex 1 is a Report on Consistency of Enforcement in Local Authorities in the Hertfordshire and Bedfordshire Area by Jane Bride. This has in part looked at the process of incident selection within a small group of local authorities (section f). It is however worth noting that the report's evidence was regionally based only and although probably indicative of many regional situations was not robust in its sampling to be definitive. Therefore the report will be circulated through the regions and devolved administrations to consider. The main finding was that LAs would find it useful to have an Incident Investigation Criteria template policy.

In terms of enforcement practices HSE has developed an Investigation Prosecution template. The template is intended for use in the following circumstances:

- For investigations where prosecution is to be considered;
- For investigations where prosecution is not to be considered but the EMM concluded prosecution as the appropriate action;
- For all prosecutions regardless of trigger intervention.
- Where required by a line manager, e.g. for high profile or sensitive investigations.

This is being trialled by HSE. There is no standard template for use by LAs but it was felt that it would be useful if a standard process was available.

Actions undertaken

The group recommended that further work should continue on incident selection criterias – LAU are currently considering trialling a standard incident selection criteria with county groups, using a template developed by Jane Bride. With any work on incident selection criteria there is a need to consider the local pressures that councils are under and that the criteria set may be a council wide one and not just applicable to health and safety incidents.

LACORS / LAU have amended the HSE's investigations prosecution template so it is suitable for LA use and it is available on the HELex.

3. Consider the barriers to taking formal enforcement action faced by LAs;

Evidence

The barriers and drivers identified by Phase 1 of the enforcement programme were discussed at the LACORS Health and Safety Policy Forum.

- a. How important is the role of enforcement in health and safety?
It was considered to be very important.
- b. What do you feel prevents enforcement action being taken?

The main barriers which prevent enforcement action relates to the number of inspectors/ resources, the competence and confidence of inspectors, and the particular culture of the authority.

- c. Have targeted approaches ie in relation to Fit3 topics restricted the ability to enforce? If yes why?
No.
- d. Have communications regarding the role of enforcement been clear? Where have you seen/heard them?
It was felt that in some cases communications regarding the role of enforcement was clear in particular circumstances (some Fit3 topics) but it was felt that there had not been a clear overall message about enforcement.
- e. How does your authority approach investigations?
Some authorities had used teams for investigating fatalities. It was noted that one authority did have an investigation team. However generally it would be an individual inspector that would start an investigation.
- f. Who manages the investigation and signs off investigations?
The manager
- g. How important is cost when considering taking enforcement action? Give examples if possible?
It was felt that cost is in people's minds, but it was not considered to be the primary driver. It however can be a factor in terms of technical issues and may also affect whether the LA appeals. It was felt that if the case is sound then there is no reason not to take it.
- h. In what way might resources restrict whether enforcement action is taken?
It was felt that the number of experienced inspectors can have an impact. Pressure from other disciplines was also cited as was the LAs legal support. It was felt that it would be useful to share lists of solicitor agents who are used to dealing with Health and Safety cases.
- i. What role does the EMM have when making enforcement decisions?
It can be used to demonstrate that the right decision has been made especially on difficult cases and can be useful to support cases. It was identified that one authority had been challenged in court as to whether the EMM had been used.
- j. Do you use the HSE enforcement guide when taking prosecutions? What do you find useful?
Many were not aware of the guide – it was felt that it needed more publicity.

The main barriers appear to be experience of officers and legal support. Costs are not considered to be a crucial factor when considering whether to take a case but may affect an appeal. Clearer messages about the role of enforcement and identification of information about taking enforcement are needed.

Actions

Following agreement at HELA put out joint statement from Chairs of HELA giving a clear message about the role of enforcement - see Annex 4.

HELA to recommend Fit3 ensures that enforcement expectations for particular projects and topics are made explicit and clearly communicated to HSE and LA staff.

4. Consider the findings and recommendations from Phase 1 of the Enforcement Programme;

Evidence

The recommendations from Phase 1 of the Enforcement Programme set out namely, that LAs should :

- satisfy themselves that incidents selected for investigation are clearly linked to delivering health and safety outcomes and enabling justice;
 - To be actioned through the new Section 18 standard.
- ensure enforcement decisions are consistent with the EPS and EMM;
 - Increase awareness of the EPS and EMM through joint statement from HELA.
- ensure close case management takes place to maintain the momentum of investigations and ensure resources are being used efficiently and effectively;
 - Production of the investigation prosecutions template for LAs to use.
- examine the scope for greater flexibility in the use of resources devoted to health and safety, for example in making more use of administrative staff to deal with the more routine aspects of investigations;
 - At the policy forum meeting it was explained that administrative staff in LAs, undertake a different role to administrative staff in HSE. However a project in Wales has taken place looking at using administrative staff to have more involvement in complaints. The results show that LAs achieved better performance for their health and safety teams, achieved by working efficiently and releasing additional time for proactive work. There is also scope for LAs to work more together across boundaries and with HSE in a more flexible way – for example through the use of flexible warrants.
- consider introducing similar performance indicators as HSE to assist the effective handling of reactive work;
 - LAs already have procedures in place for when they receive reactive notifications.
- continue to develop LA health and safety enforcement officers' knowledge and skills in relation to enforcement, in line with recommendations from the *Local Authority health and safety enforcement officers' perceptions of their support, information and training needs* (SITNA report);
 - The work being undertaken in the regions demonstrates that LAs are continuing to develop officers knowledge and skills, therefore LAs are travelling in the right direction but as Jane Bride's report highlights (h) there is an issue in relation to having the resources in place to fund training and ability to train depends on operational demands. When looking at competency it is also important to remember not only individual but also group competency.
- consider involvement in Fit3 pro-active pre-harm prosecution work;
 - LAs to consider this where appropriate. Fit3 to identify opportunities and

communicate them through topic packs/ instructions eg asbestos. But ultimately enforcement officers should be able to make this decision based on the evidence they find and the decision they make in accordance with the EMM.

- consider with HSE the scope for more joined-up communications activity and greater sharing of case studies illustrating good enforcement practice and/or partnership working;
 - To be promoted through the Compliance Code requirements.
- exploring with HSE formalising the current buddying system that exists in some locations where inspectors from HSE and LAs offer mutual support and advice.
 - See section (e) of Jane Brides report. The group felt that examples of buddying should be promoted and it should be encouraged where circumstances suit but that a more formal system should not be created.

Actions taken by the group

The group felt that these were being taken forward as identified above.

5. Make recommendations for practical measures to enable all LAs to make appropriate use of their formal enforcement powers in accordance with the EPS and other relevant codes.

- Communicate to LAs the importance of publicity following enforcement action (ripple effect). A Fit3 sub-programme (Falls) and the Enforcement Programme have prepared an aide-memoir for preparing press releases following successful Fall From Height enforcement action.
 - It is recommended that other Fit3 programmes be asked to prepare similar aide-memoirs using this model.

HSE will shortly be trialling the press releasing of notices and has prepared a draft policy framework to inform decision making. The policy indicates situations where press releases may be appropriate and also where caution should be exercised.

- LAs to be involved where possible and to be given the information to trial or participate in at a later stage.
- Encourage both LAs and HSE to share procedures for contracting legal advice:
 - LACORS and LAU believe that publicly available information and current informal networks provide a way of sharing processes / procedures for contracting legal advice.
 - Advice from the local government procurement body 4P's suggest a number of options should authorities wish to pursue a more formal process,

Progress with further work recommended by the group:

- Greater thinking needed for use of other staff in LAs to be involved in health and safety – work needs to happen in Local Government and also by HSE to influence.

- This work is taking place across government namely through the better regulation agenda, compliance code and the encouragement of closer working between regulators.
- LACORS to discuss with LAU in relation to enforcement statistics and LAs being able to see how they compare to other LAs of a similar type.
 - Discussions are currently taking place on this issue (Ongoing)
- LACORS to continue the work in relation to sanctions and potential use of other sanctions for health and safety offences.
 - Workshop to be organised by LACORS and LAU to discuss potential scenarios for application of alternative sanctions (Ongoing)
- The fighting fund was still considered to be a good idea by councils and further discussions on this should take place.
 - The task and finish group welcomed further discussion on this area. The action is for HSE to explore if there is a need for a fighting fund and if evidence suggests there is need, how any fund could work in practice. (Ongoing)
- LA/LA buddying should be promoted.
 - Further promotion of joint work on projects eg moving goods safely
 - Joint inspection teams developing in some areas.
 - Possibility of further opportunities where flexible warrants are in use.

6. Future of the group, Legacy and Outstanding actions

The group met for the last time on February 11th to agree this paper and to identify owners for any outstanding work. Thereafter the group will not meet again. Where any actions are outstanding the Chair of the group proposes that those owners report back to HELA with any significant progress and on completion.

Actions for HELA to agree

Agree the joint chairs HELA statement on enforcement (Annex 4)

HELA to recommend Fit3 ensures that enforcement expectations and where appropriate press information for particular projects and topics are produced or made explicit, and clearly communicated to HSE and LA staff. This is in line with the HSE's rationalising guidance project. (Annex 5)

Ongoing Work

Work will continue to assess the impact of using different incident selection criteria and whether a more standard format can be used. (LAU as owner).

The task and finish group welcomed further discussion in relation to a fighting fund. The action is for HSE to explore if there is a need for a fighting fund and if evidence suggests there is need, how any fund could work in practice. (LAU as Owner)

A workshop is to be organised by LACORS and LAU to discuss potential scenarios for application of alternative sanctions. (LACORS as owner)

Use of enforcement statistics discussions are currently taking place on this issue (LAU/LACORS)

Legacy

Resource template to aid LAs with management of investigations is available on HELEX with other enforcement information.

The role of enforcement in health and safety is clarified through the joint chairs statement from HELA.

HSE projects and programmes to be aware of the need to include the enforcement expectation within instructions on projects and topics and develop press notices, aide memoirs.

Enforcement information in a clearer format on the HSE website and linked from HELEX.
<http://www.hse.gov.uk/enforce/index.htm>

Annex 1

REPORT ON CONSISTENCY OF ENFORCEMENT IN LOCAL AUTHORITIES.

Jane Bride
Partnership Liaison Officer
Health and Safety Executive
East and South East Division

February 7th 2008

Summary:

The study forms part of Phase 2 of the Enforcement Programme undertaken by the Health and Safety Executive (HSE), which considered the consistency of enforcement both within HSE and across Local Authorities (LAs). This report summarises the findings from a review of a sample of Local Authority Environmental Health Departments and various HSE/LA County Liaison Groups, to consider how they managed their health and safety functions, in relation to delivering accident/incident investigations and enforcement action. The study refers to the research undertaken in Phase 1 of the Enforcement Programme and compares findings.

1. Introduction

1.1 The study centred on the East and South East Regions (HSE's East and South East Division) comprising some 115 local authorities. During Phase 1 of the Enforcement Programme, the Health and Safety Executive (HSE) undertook extensive research in relation to enforcement consistency both within HSE itself and across local authorities (LAs). This part of Phase 2 of the study, comprised of an assessment of what actually happens in relation to the management of the health and safety function and involved contact by telephone and visits to individual local authorities within the region and attendance at various County Liaison Groups. This enabled a reasonably accurate comparison to be made of the true operational position of the LAs sampled with the initial research findings.

1.2 The study focused on the 14 Hertfordshire and Bedfordshire authorities who comprise the Hertfordshire and Bedfordshire Occupational Health and Safety Topic Group. This group was selected for assessment because there is a large variation between the member LAs, in their approach to managing health and safety as a regulator and performing their statutory function under section 18 of the Health and Safety at Work etc Act 1974. The group included a unitary authority, which added further value to the diversity of the study population.

For clarity, the report has been divided into the following areas namely:

- (a) Management and resources of the health and safety function.
- (b) Decision making for health and safety interventions.
- (c) Provision of legal advice and guidance.
- (d) Policies and Procedures.
- (e) Use of available information (e.g. HSE website, Extranet etc)
- (f) Criteria for Incident Investigation.
- (g) Monitoring work and case progress.

(a) Management and resources of the health and safety function

1.3 The managerial structure within the Environmental Health Departments comprised generally of a Head of Service who managed the functional responsibilities of

the whole department and represented the service at meetings of Chief Officers, within the authority and across the county/region. County meetings would normally be held three or four times per year. Heads of Service would have most contact with Members and Portfolio Holders and would report to the authority's Board/Cabinet through Departmental Management Teams. It is normal practice that a Chief Officer from one of the authorities is nominated as a mentor to each topic area group and accordingly would attend the meetings. There is a current mentor for the Hertfordshire and Bedfordshire Occupational Health and Safety Topic Group. He should report to the County Chief Officer Board meeting so that they are kept informed of progress with any delivery plans and authorise actions, or not, as they see fit. There was evidence to show that the mentor had attended the Topic group so far on one or two occasions.

1.4 In other counties within the region, the mentor Head of Service acted as a 'health and safety' champion bringing pressure to bear on other Heads of Service of authorities who were not attending their county group or having little input into county health and safety initiatives. This approach does not seem to be a popular idea within the Herts/Beds group. It is generally the case that the Head of Service/ Chief Officer will have a significant influence on the financing and allocation of resources within Environmental Health Departments. They therefore have a key role in the delivery of health and safety programmes of work.

1.5 Below the Heads of Service, there was a Principal Inspector equivalent called a Team Leader/Manager/ Principal Inspector, who managed the individual teams of Environmental Health Officers (EHOs) and Technical Officers (TO's). Generally, there would be a Principal Officer/ Manager in charge of a group normally referred to as the Commercial Team. This regulatory unit would cover food safety, health and safety, infectious disease control, noise and statutory nuisance in relation to commercial premises etc.

1.6 The Residential/Housing function of regulating private rented accommodation (i.e. disrepair, unsanitary conditions, lack of facilities, disabled grants etc) would generally be managed within a separate team of environmental health staff. In some of the authorities, the division and grouping of the environmental health functions differed and, whereas a commercial function generally grouped together food, health and safety and infectious disease control etc, there could be a separate pollution section that would cover air pollution, noise and other statutory nuisance, contaminated land etc. In nearly all the authorities, a separate group performed the licensing function.

1.7 In the authorities visited, there was a general tendency for EHOs to be generic in their primary functions in that they would deal with both food safety and health and safety topics. This approach did vary because in seven of the authorities, officers were dedicated health and safety inspectors. Conversely, at one authority visited the EHOs dealt with all aspects of environmental health. One authority was so under-resourced that they were barely performing their function under any aspect of the environmental health functions. They were somewhat embarrassed by this position and reluctant to participate in the review.

1.8 All authorities were aware of their obligations under section 18 of the Health and Safety at Work (etc) Act 1974 and were generally aware of the current shadow running

exercise and its purpose. However, despite this understanding, in a number of authorities other topic areas e.g. food safety were given greater priority by the LA regulator. The possible explanations for this approach included;

- a better political understanding of the authority's function in this regard ; and
- the mandatory function and the strict auditing procedures that exist and were used by the Food Standards Agency and Department of the Environment, Food and Rural Affairs.

This approach tended to be more prevalent in smaller authorities where officers were multi-functional.

(b) Decision making for health and safety interventions.

1.9 Generally, it was apparent that the officers themselves made the initial decisions for health and safety interventions and actions, with referral to their line manager only arising when complications occurred, during team meetings or when the officers decided that a more formal course of action was appropriate i.e. formal caution, prosecution. If the manager agreed to formal enforcement action then the Head of Service would be kept informed.

2.0 This decision making process would apply to the selection of accidents for investigation and how they were followed up to secure compliance and meet requirements of the LA enforcement policy statement. There would normally be some degree of informal peer group review. In those authorities where the dedicated health and safety officers comprised of a small team, this occurred on a regular basis. There were no procedures in place to detail what constituted a formal accident/incident investigation, or at what point an investigation should be terminated. This approach to managing and delivering accident investigations to meet agreed objectives, would benefit from a more structured and consistent approach between LAs.

(c) Provision of legal advice and guidance.

2.1 All the local authorities have a legal services department who act as prosecutors on behalf of the authority. Generally, it was found the legal services lawyers had limited experience in prosecuting health and safety cases. In most of the authorities, the Environmental Health Departments could instruct solicitor agents and this was becoming the norm, where there was little confidence in their own legal department's health and safety legal expertise. The solicitor agent practice most commonly used was one who had experience prosecuting cases for HSE and OGDs and was local to the area.

2.2 Conversely, it was found that some Environmental Health Departments were working more closely with their in-house legal services to improve their competence in prosecuting health and safety offences together. Where this was happening, the officers stated that the knowledge of both themselves and their own solicitors was improving considerably. This exercise appeared to be one of joint learning and confidence building for both parties.

2.3 In all cases, the decision as to whether an external solicitor agent was instructed would be decided by the Team Leader and Head of Service after discussion with

the investigating officer. This management involvement was necessary because of the possible internal professional sensitivities and the cost implications of any legal proceedings.

2.4 Several authorities had, and were taking prosecutions for various offences, which included both fatal and non-fatal accidents. All were aware of the Enforcement Management Model and claimed to use it to help test their enforcement decisions. Any enforcement decision included a review of the history of the company or individual involved and other local factors. None stated that political pressures would affect their decision, but at one county liaison group attended, an officer stated that an enforcement decision could be affected by a business being the only one in town and the possible influence that a prosecution or closure would have on the local community. These criteria would probably apply to other Environmental Health Departments around the country due to their "local" presence, although whether such matters affected enforcement decisions remains largely confidential.

2.5 Some authorities stated categorically that they would also refer to the Enforcement Guide for assistance with prosecutions. Although not all LAs referred to the document those who use it generally found it helpful. Only one or two Environmental Health Departments were confidently aware of the Code for Crown Prosecutors and had referred to it, as normally the LA lawyers would apply this code.

(d) Policies and Procedures

2.6 All the authorities contacted or visited had a general enforcement policy in place for the whole authority and one specifically for health and safety. This policy had been based on the HSC's Enforcement Policy Statement. In all cases, an Accident/Incident Investigation policy was in place, although some were vague and unclear in their directions and many needed to be reviewed and updated. There were only two documents that compared in clarity and detail, to the HSE's Operational Guidance document - 'Incident Selection Criteria'. In general, it was felt that the procedures for the application of accident/incident selection criteria, setting objectives for the investigation, monitoring progress and the termination of an investigation etc were all in need of improvement. In other county areas across the region, authorities were introducing common policies and procedures that could be amended locally (within limits) if necessary, to suit organisational structures etc. This approach to selecting and managing accident/incident investigations should help to ensure greater consistency between authorities.

(e) Use of available information

2.7 Most of the authorities visited stated that they used the Extranet and the website on a regular basis. They generally felt that the HSE website was very useful but the Extranet was useful to a lesser degree and was not user friendly. Many authorities felt that access to legal advice would be helpful, where their own legal departments lacked the confidence and expertise to provide reliable health and safety legal advice. Some authorities felt that they could contact their partner inspector for such advice /information, but others did not have such a good relationship and felt uncomfortable in making such a

request. One authority stated that they had sought advice from their partner inspector, but that by the time they had responded it was too late, although the quality of the advice was good. This response to seeking information was commensurate with the authority's involvement in partnership working and the maturity of the relationship with their HSE inspector partner(s).

(f) Criteria for Incident Investigation.

2.8 Although all the authorities had Accident/Incident Investigation policies in place, some required review and updating as they did not fully incorporate the Fit 3 strategic programme priority topics. With only one or two exceptions, the policies were not as comprehensive as the HSE's Operational Guidance and there were inconsistencies between authorities.

2.9 In most cases, the RIDDOR reports (F2508's) were downloaded by administration staff and passed directly to the relevant officers. It was then their decision as to whether the officer investigated the incident and the extent of the investigation process. In those authorities where there was a specialist team for health and safety, there was some peer group review and in one authority, cases were reviewed on a regular basis by the team. This system was reported as working well. It provided support for the investigating officer and helped their confidence when making decisions. The Principal Officer was also involved in the reviews and so cases were closely monitored. There was no equivalent to the Key Decision Log sometimes used within HSE for major investigations. A more disciplined approach arising from using such a log could assist local authorities in managing significant investigations and in improving consistency.

3.0 In an effort to ensure greater consistency, some county groups were considering the use of standard policies and procedures for all the authorities within their area. This approach would help to improve consistency of process, particularly if aligned with HSE's Operational Guidance.

(g) Monitoring work and case progress

3.1 This area of activity was in need of improvement. Generally, with the exception of two LAs, there were no formal procedures in place for monitoring the progress of investigation cases. The systems relied on the professional diligence and integrity of the investigating officer to progress the case to a conclusion. In those instances where formal action was under consideration, the Team Leader was more likely to be closely monitoring the case. In one authority, there was a facility provided by the computer system to enable cases to be tracked and monitored electronically. Although this would provide alerts to the investigating inspector and their manager, it relied upon efficient and accurate data entry to be of any value.

3.2 Although none of the authorities admitted to undue delays with the progress of cases under investigation, there were no documented procedures in place to establish how timeliness of the investigation process and outcomes were assured.

(h) Training

3.3 There is great disparity in the approach to training EHOs and HSE Inspectors as health and safety regulators across the spectrum of skills, knowledge and competencies. The training of EHOs as a health and safety regulator takes place largely after being awarded, the formal environmental health academic qualification. In addition to the practical experience from carrying out the duties of an EHO, further training is largely at the whim of the LA and subject to the availability of finance and other operational demands within the department. This absence of a common structured approach to training EHO health and safety regulators, results in inconsistencies with some officers being better prepared and trained than others, even though they work for the same authority.

CONCLUSIONS.

3.4 The appendix attached is a profile of all local authorities within the Eastern Region including those within the sample county group of Hertfordshire and Bedfordshire. There appears to be no correlation between the size of the authority and the amount of enforcement work that they undertake. The most significant factor is the level of resource the authority is prepared to allocate to the health and safety function as opposed to other priorities such as food safety. In larger authorities, there is more likelihood of there being a dedicated health and safety team but this does not necessarily lead to a more consistent approach to delivering health and safety interventions and enforcement. There is a need for more active management and procedural rigour across LAs to improve the delivery of the health and safety function, both within and across LAs. Such an approach with supporting systems would help to improve the consistency of enforcement decision making.

3.5 One of the greatest areas of inconsistency across the LAs sampled was the approach to selecting accidents/incidents for investigation. The informal arrangements adopted by many LAs could be improved, with the introduction of a standard policy and the application of agreed incident selection criteria. This would help to force a consistent approach, ensure improved deployment of resources whilst allowing for some flexibility and discretion within authorities to respond to local circumstances and demands. This approach has been introduced within some counties such as Hampshire and has been well received.

3.6 There are significant issues regarding a more consistent approach to training both EHO and HSE health and safety regulators. In the medium term, work is underway by HSE and LACoRS to develop a common competency framework for HSE and LA health and safety regulators. Although this should help to improve consistency between the enforcing authorities, there are currently gaps in the training provided for many EHOs.

3.7 The partnership work undertaken by many HSE and LA inspectors such as joint inspection projects, fatal and serious accident investigations has helped to improve the confidence and performance of some LA inspectors. The specialist training and briefings provided to HSE and LA inspectors undertaking joint project working such as asbestos duty to manage, enforcement consistency, slips and trips, manual handling and electrical safety is also welcomed and appreciated as a means of securing health and safety outcomes and improving performance. Whilst it is acknowledged that LAs are responsible for providing and facilitating training for their inspectors, this approach to partnership working and delivering improvements to securing compliance can only assist in improving consistency.

Actions

- Pilot the incident selection criteria template with some authorities to include the management side of selection i.e having a manager or senior EHO as the person responsible for selecting the incidents to be investigated etc.
- Trial peer reviews of investigations/cases either between local authorities or local authorities/HSE.
- Share the report with other partnership teams.

Annex 2

Advice from 4P's in relation to procurement of legal advice

1. Check to see if the authority has previously appointed a panel of law firms capable of providing health and safety advice as required. The authority could let individual contracts to these panel members. The authority's in house lawyers would be able to advise whether such a contract could be let either:-

- (1) following a mini competition stage involving the panel members capable of providing the service; or
- (2) directly to one panel member if it is clear they are the only suitable candidate.

If there is no such panel in place the authority (or a number of authorities working together) might consider setting one up in accordance with the public procurement rules on framework agreements.

2. As a variation on the above, the authority may be able to call off its requirements from a regional framework, where typically 3 - 5 law firms are prequalified by a lead authority (on behalf of itself and others) based on the ability of those firms to deliver the service. The authority will need to check the call off arrangements and these may depend on such matters as price and availability.

3. Helpfully, OGCBuying.solutions recently ran a competition to pre-qualify a number of law firms to Catalyst framework agreements. These are pre-completed supplier lists that are EU compliant. One such framework agreement is called "Legal Services - Construction", whose panel members are qualified to offer health and safety advice among other matters. The framework agreements are available for use by local authorities (as well as other public bodies in the UK). OGCBuying.solutions' web site indicates that it may be possible to place a single order with one panel member without resorting to any competition. Alternatively, the local authority may be required to invite all capable panel members on the framework to compete for the work by submitting a bid. The authority will need to seek its own advice on the best route for calling off its requirements. For further information on this process please visit <http://online.ogcbuyingsolutions.gov.uk>.

4. Finally, authorities have access to a number of directories that contain information on law firms and by practice area (including health and safety), for example the UK section of the

Legal 500 directory (<http://www.legal500.com>) or the Chambers and Partners directory (<http://www.chambersandpartners.com/uk/search31.aspx>).

Annex 3

Work going on in the regions – reports from the partnership teams

East

- 200 LA representatives have attended briefing sessions covering EPS, EMM and on gas safety.
- High level joint investigation work – especially on fatalities
- Virtual teams have been put together
- Each Fit3 project has started with training days including enforcement expectations.

South East

- 3 events have been run covering consistency of approach to asbestos and electrical issues.
- Introduction of flexible warrants encourages greater thinking about consistency issues.
- An investigation team has been developed in Sussex.
- A number of joint workshop events have been run on the use of EMM to determine appropriate enforcement action.
- A county group approach to incident selection and investigations.

London

- Managing investigations training happened in January. The group identified that they needed:
 1. A template for the Selection Criteria for the investigation of accidents/ incidents (many borough's had their own but they were not wholly consistent with that of the HSE and some needed updating)
 2. A template for investigation reports. (Task and Finish document)
 3. A proforma document for the management of investigations - will be based on that of HSE and selected good practice from other borough's- (HSE -FOD are currently reviewing their procedures).
- Charles Horsefield is acting as a mentor for London LAs.

YNE

- Liaison groups are interested in consistency issues especially in relation to investigations /complaints and are looking to test their procedures against HSEs documentation and then work out what is best for them.
- Trialling the setting up of teams looking at purely investigation, interventions or a combination of both.

Midlands

- 2-3 county groups have had training on EMM.
- An accident investigation skills workshop is planned for Feb.

Wales

- Training days on management interventions work.
- Training days for specific Fit 3 topics including work at height, dermatitis in catering, hairdressing, asbestos and legionella.

Scotland

- The EMM is regularly referred to and LAs undertake work in accordance with it.

North West

- In the NW we have set up a working group comprising of Trades Unions, HSE and LA representatives, to help to understand our respective roles better and improve communication and promote consistency between us all. Preston and Warrington LAs are represented on this group.
- In January, Greater Manchester Police (GMP) in conjunction with HSE and the ten Greater Manchester LAs organised a 'Vanguard Awareness Day', to promote the Vanguard cash and valuables in transit initiative being run across Greater Manchester. Merseyside and Lancashire authorities are now interested in becoming involved.
- The Greater Manchester authorities have organised a 'Violence at Work' training day for their officers (27/02/08) and are also doing some training around legionella for spa pool operators in the region (28/02/08).
- HSE inspectors are providing two briefing days for EHOs across the region on the Noise at Work Regulations relating to the music and entertainment industry and are combining this with a practical briefing on asbestos. The events are at Redgrave Court on 5 March and the County Hotel, Carnforth on 18 March.
- Trafford MBC have organised, in conjunction with HSE, a Better Backs event 'Lifting and Handling in Care Homes' at Manchester United FC on 6 March 2008.
- Lancashire Legal Skills Training course is being held on the 6 + 7 March and has been organised by Peter Lord.
- HSE Specialist inspectors are providing a training day around commercial gas safety in SMEs, predominantly for the Greater Manchester LAs (who requested it) and this is now being opened up to the other County groups too. The event is at Deane Golf Club on 25 March 2008.
- Linda Green from Vale Royal is organising a golf day event on 16 April to be held at Sandiway Golf Club. The event will be Cheshire wide and will be aimed at Head Greenkeepers and Club Secretaries, focusing on FIT3 topics associated with golfing, risk assessments, overturned vehicles and hazard spotting.
- Merseyside LAs are organising a Duty holder noise event - occupational noise exposure in pubs and clubs. The provisional date for this has been set as 9 June 2008 and the event may be held in conjunction with the Cheshire LAs (to be confirmed)

Annex 4

Joint Chairs of HELA statement on:

Enforcing in line with the Enforcement Policy Statement

We all agree that formal enforcement activity is a powerful tool for achieving major change in the management of risk and improvement in the protection of workers and others. Our proportionate use of enforcement powers underpins and amplifies the effect of many of our other actions. It is therefore vital that we have confidence and can demonstrate that we use our powers in a way which is fully consistent with the HSC Enforcement Policy Statement.

As part of the enforcement programme an assessment of enforcement activity took place and showed that 75% of LA's total enforcement activity was undertaken by 25% of local authorities.

As Joint chairs of HELA we want to re-iterate that formal enforcement activity (serving notices and taking prosecutions) continues to play an essential part in what we do. Whilst we do not want to see enforcement for enforcement's sake, or to set specific enforcement targets, we wish to make it clear that, in the exercise of discretion, we expect the principles set down in the Health and Safety Commission's Enforcement Policy Statement, supported by the guidance set out in the Enforcement Management Model, to be closely followed. It is also important that adequate records of the decision making process are kept. The new Section 18 standard identifies that every enforcing authority shall use interventions, including enforcement action, in accordance with their enforcement policy and within the principles of proportionality, accountability, consistency, transparency and targeting.

Following recommendations from Phase 1 of HSE's enforcement programme, HELA set up a task and finish group to take forward those recommendations. One such area of work that the group has identified is the need to improve communication in relation to enforcement expectations. This is to be backed up with clear enforcement expectations set out by the policy and programme teams at HSE eg in relation to manual handling and slips and trips.

It has also been noted that in some cases officers have been challenged in court over whether they have used the EMM to inform their decision in relation to the action they should take. This should be noted and officers should ensure that all decisions are recorded. With the enactment of the Compliance Code in April 2008 it is vital that council procedures ensure effective and well targeted regulation which is proportionate and flexible to allow and even encourage economic progress. These are the foundations of the HSC's Enforcement Policy Statement.

Enforcement is an important part of our work which promotes and achieves sustained compliance, and enables us to bring duty holders to account. Rightly, our enforcement decisions are increasingly open to scrutiny and it is important that we are seen to be consistent and to use the wide range of enforcement tools available to us effectively.

Annex 5

RATIONALISING OPERATIONAL GUIDANCE PROJECT & ENFORCEMENT STRATEGIC ENABLING PROGRAMME

Good practice principles for improving the accessibility of instructions & guidance in support of Fit3

A Paper by Barry Rawlinson and Laurence Monaghan (HSE)

Why review instructions and guidance material?

The internal instructions & guidance supporting Fit3 are now very voluminous. The total amount of current material exceeds 1,400 pages: the 428 pages issued this year specifically refer/link to another 981 produced previously

Individual documents can be very lengthy (60 -70 pages each) & very complex, with numerous annexes & lately, sets of spreadsheets as well

The structure of the topic inspection pack – a format introduced to deliver Revitalising in 2002 - has never been standardised.

The original differences between OCs, OMs & SIMs have become quite blurred & whilst there is a standard OC/OM format, there is not one for SIMs.

What types of material do we publish?

We publish at least the following different types of material:

- explanation of the law
- expectations of duty holders
- enforcement guidance
- why inspect
- what to inspect
- who to inspect
- when to inspect

- how to record inspections
- the result of previous inspections

Note: “inspect” here is used also to mean other forms of contact

Categorise information types and audiences

These types of material are conceptually very different; they serve different purposes, have different target audiences & often quite different life spans:

- commentaries on acts & regs explain the law as enacted & only need to change when the law changes
- expectations of duty holders describes what they need to do to comply with the law, established standards, etc, irrespective of any intervention programme by HSE; they change if the law changes and also if our understanding of hazard & risk alters
- enforcement guidance assists inspectors to take enforcement action in accordance with the HSC Enforcement Policy Statement following proactive or reactive interventions by comparing the expectations of duty holders with the actual conditions on the ground
- why we are inspecting something is the strategic context, including background information on incident rates, etc; this only changes slowly & maybe only needs to be read once
- specifying what to inspect concentrates our efforts on where we hope to make the most difference & this will change over time, maybe next year or in a couple of years or so, & we can never cover everything – although duty holders are expected to
- who to inspect (invite to a SHAD, etc): lists of duty holders or SIC categories to be used to find duty holders, etc; lists will be produced for a particular year & will get out of date, maybe very quickly
- when to inspect: what has to be done to deliver an annual work plan & when during the year – maybe in months linked to a wider campaign
- reporting: how to record what has been found & what action was taken
- previous outcomes: what was found last year, lessons for this year, etc: the value of this information also declines over time

Keep things separate

There are several reasons for keeping all these different things separate:

- not everything needs to be read every time: some things only need to be read once, some will need to be referred to repeatedly
- they don't all need to be read at the same time: some stuff will only be scanned quickly at the beginning of the year, others material will be read through properly when the programme of work actually starts & other stuff will be read particularly attentively immediately before making a series of visits
- stuff often need to be read by different people – from B1 HoOps to B6s trying to find duty holders over the phone
- some things can comfortably be read on screen, other stuff will have to be printed off to be properly studied & be taken out of the office

- all this stuff gets out of date & need reviewing/replacing/cancelling at different times

If expectations of duty holders & this year's inspection targets & the strategic context & enforcement guidance are all mixed up in the same document:

- each person has to read an awful lot more than they need to find the bit they want
- it's almost impossible to decide when to revise or cancel the whole document

An interim step would be to confine "timeless" guidance to the topic pack format & restrict time-bound instructions to more easily replaced circulars

However, ultimately moving away from these document series would be more desirable because just publishing web pages & not paper-format documents would allow material both to be better indexed & even more chunked up

Linked to this would be the need to replace the current classification system (OCs, SIMs, LACs, etc) with a new subject based scheme. A very simple version of such a system is currently provided on the HSE website for LA use through "Fit3 Street". A more elaborate version could be envisaged for use within HSE – primarily, of course, in FOD.

Improve assimilability (speed up reading)

Feedback from staff also suggests we should:

- lay out documents in an increasing level of detail
- place key messages clearly up front
- identify the action required at the beginning & not at the end
- place background material actually in the background & not at the beginning
- adopt a standard order & a standard set of labels to aid familiarity
- clearly index the whole package by content, target audience, timing of the action required, etc, by listing all the separate items in it on a single sheet in a standard format
- make currency (issue date) & ownership (an HSE contact name) clear

Consolidate

It would also help if:

- we consolidated previously published material with new stuff as much as possible
- we didn't just add to the pile year on year
- we adopted a one in, one out policy for annually produced material
- wherever possible, we authored once for both an internal, HSE, & external, LA, audience instead of duplicating SIMs & LACs as now

Link internal and external material

We put a lot of effort into producing clear, accurate & comprehensive guidance for duty holders. Much of this is free, although some of it is in the form of "priced publications"

Inspectors have traditionally (rightly) relied heavily on this material when inspecting premises. There seems little need to repeat any of this material in internal guidance

However, how to inspect (what to look for, concentrate on, target, etc) is for internal consumption & is not the same

Rather than a bibliography, if (externally published) expectations of duty holders were better related to internal & better developed "how to inspect" guidance, we might have:

- a more coherent overall package of material
- less overlap & duplication of guidance
- less to read overall
- better targeted inspection effort