

Health and Safety Executive Board Paper		HSE/06/53	
Meeting Date:	5 July 2006	FOI Status:	Open
Type of Paper:	Above the line	Paper File Ref:	
Exemptions:	No		

**HEALTH AND SAFETY EXECUTIVE
The HSE Board**

**Update on the Enforcement Strategic Enabling Programme (StEP)
A paper by Eddie Bailey and Laurence Monaghan
Cleared by Sandra Caldwell on 29 June 2006**

Issue

1. Progress report on the work of the Enforcement StEP.

Timing

2. Routine.

Recommendation

3. That the Board notes the progress made by the Enforcement StEP to deliver its programme of work; and in particular endorses the proposals in relation to emerging recommendations on improving performance management arrangements within operational commands.

Background

4. The Enforcement StEP was fully established in Autumn 2005. Its primary aim is to develop proposals to make best use of formal enforcement in delivery of health and safety priorities. To tackle this task, the work of the Programme has been broken into a number of interconnecting workstreams, overseen by a Programme Board, as explained in the High Level Plan at Annex 1.
5. The focus of this paper is to update the Board on the principal workstreams for enabling HSE and LAs to achieve: consistent enforcement decision making; efficient and effective use of investigation and enforcement resource; alignment of enforcement behind Fit3; optimal use of enforcement communications; alignment of HSE and LA enforcement activity.
6. The Programme is contributing to the ongoing work of the Fundamental Review and has also sought to integrate its work with that being undertaken under the FOD Better Team Leadership initiative and regularly consults with those involved.

Argument

Improving the efficiency and effectiveness of investigation and prosecution activities

7. This workstream focuses on improving the delivery of HSE's and LAs' investigation and enforcement activity to ensure it is used appropriately, efficiently and effectively. It has drawn on evidence compiled from a number of sources, including the recent Regulatory Decision Making Audit (RDMA), FOCUS data and interviews with inspectors. The RDMA, in particular, has raised concerns about:

- a. the extent to which inspectors are following the principles laid down in the Commission's Enforcement Policy Statement (EPS);
- b. the number of visits made during investigations;
- c. and that a significant number of incidents selected for investigation did not lead to health and safety improvements following the investigation.

8. Under the guidance of our Programme Director, taking account of the RDMA, we have developed, or are developing, measures to:

- a. improve the targeting and planning of investigations;
- b. share best practice and develop inspectors' investigation and enforcement skills;
- c. enable closer management of enforcement activity;
- d. improve investigation reporting and review; provide better management information; and
- e. clarify enforcement expectations.

Improving the targeting and planning of investigations

9. The RDMA panel observed that only about half of the incident investigations sampled secured improvements as a result of the enforcing authority investigation. Acting on this information, the Programme has proposed an amendment to the OPIP selection procedure to improve the targeting of investigations. The amendment will improve the way in which we identify, select or discount such incidents for investigation. This approach is consistent with the EPS's principle for targeting investigations and administers a more balanced consideration of the factors to take account of in selecting incidents, as set out in paragraph 33 of the EPS.

10. This amendment has been agreed with FOD MB, OMT, and OPSD. Work is ongoing to inform estimates of the reduction in investigation numbers and quantify the resource released, and there will also be ongoing evaluation following implementation. FOD MB also agreed that where incidents are selected, greater pre-investigation planning and closer management to plan should occur. To support this, the Programme is developing a COIN note, with instructions, enabling managers to record a selection and set out for the investigator the resourcing, timing, and initial enforcement expectations of the subsequent investigation.

Improving investigation and enforcement delivery

11. The Programme held a cross-HSE workshop to analyse a range of business models for investigation and enforcement delivery, including a one-team model currently in use in a quadrant of ESE Division. From their analysis, the workshop agreed a set of underpinning principles and behaviours for improved delivery. FOD MB has signed up to these principles and behaviours and work is underway to promulgate them within field divisions.

12. To secure wider improvements in investigation and enforcement delivery, and drawing on existing good practice, the Programme has focused on developing a fit-for-purpose approach to investigation to complement the policies and procedures already in place. The measures support:

- a. closer management of investigation and enforcement activity;
- b. development of inspector's investigation and enforcement skills; and
- c. expanding front line capacity, eg through the greater involvement of admin staff in investigation and enforcement work.

13. FOD MB and OMT support this approach. The Programme has begun trialling the measures with teams in FOD Scotland, Midlands and East & Southeast, and will be involving more teams later. Within all FOD field divisions closer management is already being exercised, and discussions are taking place about current work practices to identify areas for action. FOD MB has also agreed that the Programme should prepare regular enforcement items for FOD Briefing to inform staff of change and actions to take, starting with FOD MB's description of what appropriate, efficient and effective investigation and enforcement looks like in practice.

14. To evaluate possible additional performance gains from alternative models for operational business delivery, the Programme has designed two models, described in annex 2, to be piloted within FOD for 18 – 24 months from April 2007. The pilots will run in addition to the measures already described and evaluated to assess what further gains they may provide.

Improving the consistency of enforcement decisions

15. The CE and DCE (Ops) will shortly be issuing a joint communiqué, stating their position on the findings of the RDMA. This communiqué will be supported by messages from operational directors, setting out to staff clear expectations for the use of enforcement and reinforcing the importance of ensuring enforcement decisions are in line with the EPS.

16. The Programme's proposals for line managers to sign-off all investigations as part of the investigation and enforcement performance indicator arrangements will also improve the consistency of enforcement decisions. The sign-off, agreed by FOD MB and OMT, includes a review of the EMM result, and an assessment that the enforcement decision taken is consistent with the EPS.

Improving the reporting and monitoring of investigations

17. To improve the reporting and monitoring of investigations, the Programme has developed a new OG investigation report template for use with COIN. The template is designed to: capture key information from the investigation; provide a structure to the investigation process; provide managers with performance data; and capture intelligence for use by the FIT3 Programmes. The draft template has been circulated with operational inspectors and managers for comment, and will shortly be put to OPSD, HID, LAO, FOD HQ and FIT3 for agreement and implementation.

18. The Programme has also developed a 'dashboard' of performance indicators for investigations and resulting enforcement (see annex 3 for illustrative purposes; work continues on this). The indicators focus on the targeting, the time and cost management of investigations, and consistency of enforcement decision-making. Supported by FOD MB, OMT and PEFD, the indicators are currently being prepared for introduction. The dashboard is to inform HSE's balanced scorecard, and a similar approach is to be developed for other FOD activities.

19. HID/NSD have been engaged in developing the Programme proposals and the major hazards workstream is now developing its own proposals to ensure that the emerging details continue to mesh with activity in the major hazards sector. Similarly, LA representatives have been involved in the emerging proposals and will be considering their applicability within LAs.

20. In summary, much work to improve investigation and enforcement performance is already happening, and progress is ongoing with measures for further improvement. **The Board is invited to support the actions taken to date by the Enforcement StEP, and to support the further work in progress.**

Enforcement supporting delivery of Fit3

21. This workstream was established to explore the ways in which formal enforcement activity should support delivery of the Fit3 Strategic Programme and provide direction in preventive enforcement work. A mapping exercise, undertaken at the outset of the Enforcement Programme to assess the extent to which such activity had been considered in contributing to individual programme aims, particularly in those programmes with well established risk control standards, concluded that more could be done.

22. Since then considerable progress has been made to embed the role of preventive enforcement into Fit3 planning and delivery. The Programme team has worked with the Fit3 Programmes to:

- a. ensure that strong messages on the role of preventive enforcement in Fit3 have been communicated to, and understood by operational field staff (including LAs), primarily through the Fit3 Roadshows;
- b. support Fit3 Programme planners as they actively incorporate enforcement expectations into programme plans, utilising the particular skills and powers of inspectors to best effect;

- c. provide inspectors with operational guidance that includes expectations of the circumstances as to when enforcement action within Fit3 is to be taken, including benchmarking;
- d. assist with the re-launch of the inspection topic packs to maintain momentum and provide inspectors with additional support materials to facilitate preventive prosecution work;
- e. building on a successful initiative in the construction sector, develop pilots in the more “mature” FIT3 risk areas to develop best practice models for taking preventive prosecutions;
- f. consider the scope for the greater use of tactical, preventive enforcement in “newer” areas such as stress which, supported by effective communications, would build and sustain a ripple and deterrent effect;
- g. through the communications managers network, more generally to agree enforcement messaging for campaigns and other project work.

23. The successful delivery of some Fit3 programme plans is highly dependent on a significant contribution from LAs. LAs have attended the Fit3 Roadshows and internal HSE guidance is being translated into the appropriate LA format. The Enforcement Programme team has been closely engaging with LA representatives to ensure that its recommendations take their perspective into account and can be applied within the LA environment.

24. Taken together with the proposals from the efficiency workstream, it is reasonable to assume that Fit3-directed inspection will lead to an increased level of preventive formal enforcement activity, including prosecutions. However, there remain considerable challenges around the extent to which HSE has the requisite intelligence capability to target poor performers effectively, including “rogue traders” (on this latter issue, the view of the Enforcement Programme Board is that our approach should be risk based, proportionate and should not divert resource from other pressing priorities). More innovative approaches, for example through linking up more with other regulators, such the EA, to share intelligence, are being explored.

Communications

25. The role of communications is key. By this we mean:
- a. the correct positioning of enforcement in our mix of interventions i.e. maintaining the correct balance between HSE as an advisory body and an enforcing authority;
 - b. providing better information about our enforcement role so countering mixed messages of our role to both internal and external audiences;
 - c. seeking to work together to build and sustain a ripple effect from our health and safety enforcement activity;
 - d. and sharing best practice, both internally and with LA inspectors.

Through these activities, we aim to ensure that communications continues to play its important part in driving up health and safety standards.

26. On internal messaging, we need to ensure that a consistent message on the role enforcement plays in underpinning delivery of our strategic goals, is communicated to inspectors. This builds on the acceptance within Fit3 in particular to consider enforcement expectations and messaging at the strategic development stage of delivery campaigns.

27. Beyond that, the Programme team is:

- a. working with Fit3 to ensure that the strategic messages of appropriate, proportionate but 'fair but firm when necessary' enforcement are integrated into Fit3 communications plans;
- b. undertaking research into the ripple effect;
- c. examining the means of providing support to HSE and LA inspectors to ensure best practice and efficiency in the use of communications;
- d. exploring the possibility more generally of more 'joined-up' HSE and LA local and regional media activity;
- e. redesigning the HSE enforcement web micro-site and internet page to ensure they are more audience focused and relevant, easier to understand and simpler to access; and
- f. initiating the development of an electronic-based community of inspectors – open to both HSE and LA inspectors - to enable them to share best practice, including case study material of unusual/challenging/successful enforcement activity.

28. We are now also developing the lines-to-take and the most effective means to communicate the 05/06 enforcement figures. This will require a balancing act, defending the expected fall in numbers as not impinging on the overall quality and impact of our enforcement effort. As explained above, we expect that closer adherence to the EPS, more active case management, raised enforcement expectations within Fit3 and better targeting of poor performers, should increase headline numbers in subsequent years.

Programme closure

29. The Programme plans to present a report in Autumn 2006, setting out its final recommendations and on whom they will fall for ownership and implementation. A mirror document will be put the LACORS Policy Forum setting out specific proposals about HSE and LAs can work further together, and support one another, to gain consistent implementation of the Enforcement Programme's proposals. Specific projects, for example leading the work on amending OPIP and on implementing the performance indicators, will be taken forward by a reduced Programme team before final closure in Spring 2007.

Financial implications

30. Whilst enforcement levels have dropped, the time spent on enforcement activity has remained steady. The work within the efficiency and FIT3 workstreams to improve the targeting and consistency of enforcement is anticipated to lead to an increase in the level of enforcement arising from both proactive and reactive interventions. There is high level expectation the increased enforcement will be delivered from within

current enforcement resource levels through improved performance management of enforcement delivery using the measures described above.

31. The Programme recognises that more work needs to be undertaken to assess and be able to articulate the costs and benefits arising from the work of the Programme. The Programme's approach thus far has been to seek to act on procedural and other improvements as they emerge but now that our overall recommendations are becoming firmed up, work on benefits realisation, for example, can take place.

Presentational issues

32. None immediately but see paragraph 28.

Consultation

33. Within HSE, including the TU side.

Action

33. As per paragraphs 3 and 20.

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The Enforcement Programme – High Level Plan

Background and Purpose:

The Health and Safety Commission's (HSC's) Strategy sets the framework for energising Great Britain's approach to improving workplace health and safety for the future. The emphasis is on preventing harm in a developing health and safety culture, which is in-tune with the modern world of work. The Strategy recognises that the Health and Safety Executive (HSE) and local authorities (LAs) need to continue, where appropriate, to take proportionate enforcement, targeting finite resources where they can have most impact.

This is because we know that firm, properly targeted and proportionate enforcement underpins the actions HSE and LAs need to take to deliver the Strategy; and that formal enforcement action amplifies all that is done to bring about sustainable, long-term reduction in occupational injury and ill-health. This Programme builds on this knowledge and will make recommendations about the use of formal enforcement activities¹ by HSE and LAs in accordance with HSC's Enforcement Policy Statement and within the frameworks of modern regulation and sensible risk management.

Aims:

This Programme will examine HSE's and LAs' formal enforcement activities and make recommendations that will better enable HSE and LAs to:

- where appropriate, use these activities to support delivery of the targets to reduce occupational injury, ill-health and days lost through work;
- undertake prosecutions and conduct the associated investigation work more effectively and efficiently;
- determine whether more should be done to target and enforce against those who deliberately flout the law and put others at risk for financial gain;
- optimise and sustain, through communications, the ripple and deterrent effect of these activities.

Framework:

The Programme is guided by the objectives of the Health and Safety at Work etc. Act 1974; the HSC's Strategy and Enforcement Policy Statement; the Criminal Justice Systems in England/Wales and Scotland; and the Government's commitment to *better regulation*. The Programme's products will be delivered through eight interrelating workstreams as set out below.

Benefits:

Implementation of the Programme's proposals will contribute to:

- the Government's commitment to effective inspection and enforcement;
- delivery of the targets for reducing occupational injury, ill-health and days lost through work;

- HSE’s and LAs’ continuing commitment to provide justice for those harmed by work;
- maintaining a credible level of formal enforcement activity;
- maintaining the deterrent effect; and
- demonstrating that public money is being appropriately used to protect against work-related risk.

Governance:

The Programme’s sponsor is Geoffrey Podger, Chief Executive of HSE. A Programme Board, chaired by Sandra Caldwell, HSE’s Director of Field Operations, as Programme Director and Senior Responsible Officer, oversees the work of the Programme. Senior people from LAs, HSE, LACoRS (Local Authorities Co-ordinators of Regulatory Services) and the Environment Agency sit on the Programme Board.

Eight interconnecting Workstreams:

Evaluation and Review of EPS			Evaluation and Review of EPS			
EPS	Local Authorities				EPS	
EPS	Fit 3	Efficient and Effective	“Rogues”	Communications	Major Hazards	EPS
EPS	Research				EPS	
	Scotland	Scotland	Scotland	Scotland		
Evaluation and Review of EPS			Evaluation and Review of EPS			

Four central workstreams:

Four central workstreams flow from the Programme’s aims:

“**Fit 3**” - enabling formal enforcement activities to be better aligned to support delivery of the “Fit 3” programmes²;

“**Effective and efficient**” - recommending how HSE’s and LAs’ investigation and prosecution activities could be made more appropriate, efficient and effective;

“**Rogue traders**” - recommending whether further action is necessary to target and enforce against those who deliberately flout the law and put others at risk for financial gain, as part of the Government’s commitment to *better regulation*; and

“**Communications**” - producing and implementing an Enforcement Communications Strategy because we recognise that isolated formal enforcement action will not provide

a sufficient impetus to drive up standards. Our communications strategy will, among other things, look at how we can make better use of publicity and other communications, to provide and promote a ripple and deterrent effect from our enforcement efforts.

Enforcement Policy Statement:

All the workstreams feed into and are bound by the workstream “**EPS**” on review and evaluation of the HSC’s Enforcement Policy Statement (EPS).

Local Authorities:

A separate workstream has made and maintained arrangements to involve LAs in development of the Programme, and ensure that the Programme’s recommendations are relevant and workable for local authorities. **However**, we will not report separately on this workstream but integrate reporting into the four central workstreams.

Research:

The Programme is underpinned by “**Research**” - supporting all the Programme’s recommendations and other workstreams with evidence from research and learning from others.

Major Hazards:

The white column in the table represents the “**Major Hazards**”³ workstream in which we will ensure that the relevant Programme proposals fit with HSE’s work to control Major Hazards.

Scotland:

Within each of the workstreams we will ensure that the Programme’s recommendations are relevant and applicable within the judicial systems in England/Wales and Scotland.

Footnote: 1. Formal enforcement activities are defined as: prosecution; Crown censure; service of Notices (Prohibition, Improvement and Crown); withdrawal of licences outside the major hazards sectors, for example, under the Asbestos Licensing Regulations; formal cautions; and new types of penalties, such as administrative fines and restorative justice, as these become available.

2. “Fit 3” refers to HSE’s strategic programme, “fit for work, fit for life, fit for tomorrow”, to deliver that part of HSE’s Public Service agreement (PSA) on reducing work-related ill-health, injury and time lost.

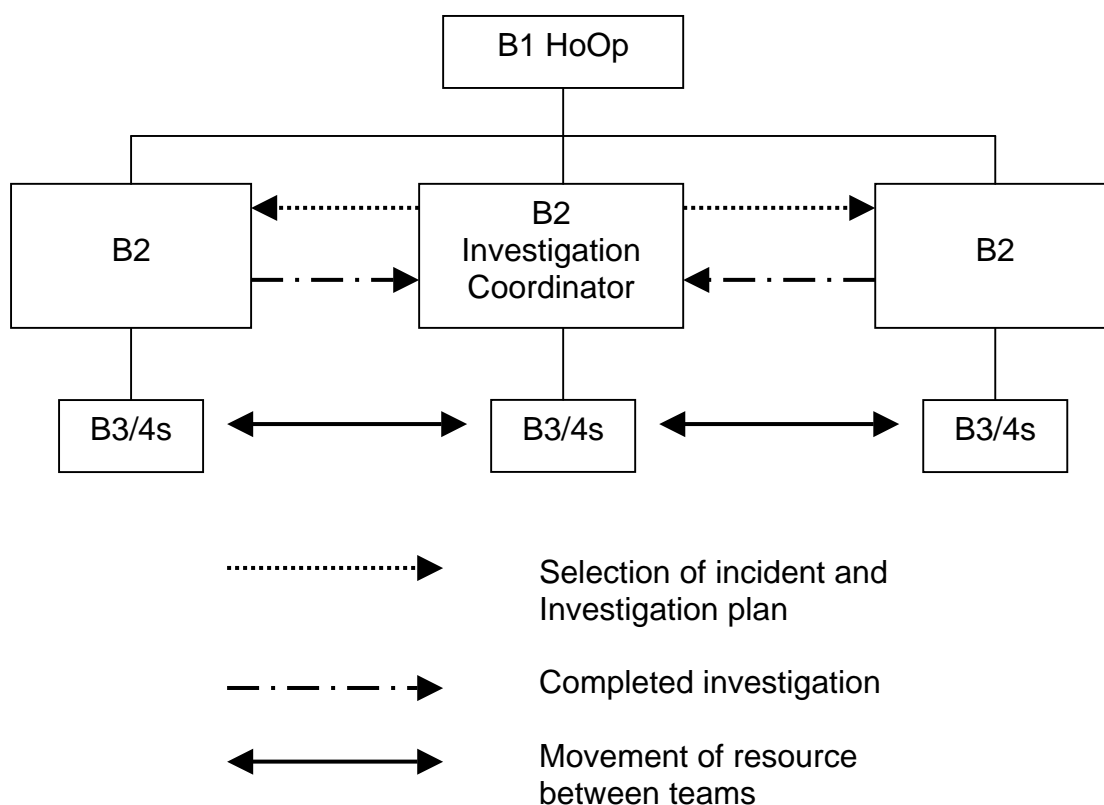
3. “Major Hazards” reference to Major Hazards Strategic Programme 2005 to 2008, which encompasses activity within HSE’s Nuclear Safety Directorate and Hazardous Installation Directorate to reduce the likelihood of catastrophic incidents in the major hazard industries they regulate.

A Multigroup-Plus Model

Overview

- Inspectors operate in the current multigroup structure.
- Operational B2s manage the reactive and proactive work of their teams.
- B3/4 inspectors are responsible for delivery of reactive and proactive work.
- A single B2 investigation coordinator selects all the incidents for investigation in the B1 unit.
- The B2 coordinator then assigns the investigation to a B2 team (which may be their own) and provides an investigation plan setting out the objectives, initial enforcement expectations, resource plan and timetable.
- The investigating B2 (which may be the B2 coordinator) resources an investigation team using inspectors from their and other's B2 team as appropriate.
- The investigating B2 actively manages the investigation and directs the lines of enquiry.
- The investigating B2 concludes the investigation and confirms any enforcement action.
- The B2 coordinator approves prosecutions, and performs performance indicator sign off of investigations for investigating B2s.
- One of the investigating B2s approves prosecutions, and performs performance indicator sign off of investigations for B2 coordinator.
- The B2 coordinators in a Division form the membership of RDM/peer review panel when necessary.

Organisational Structure



Roles

B2 Investigation Coordinator to:

- Manage delivery of FIT3 campaigns, business group delivery plans, and other frontline work.
- Operate incident selection procedure.
- Assign to B2s investigations and set objectives, initial enforcement expectations, resource plan and timetable.
- Approves all prosecutions.
- Sign-off all investigations and collates performance indicator data.
- Provide B1s with performance data.
- Capture and promote investigation and enforcement learning and achievements.

Other B2s to:

- Manage delivery of FIT3 campaigns, business group delivery plans, and other frontline work.
- Resource investigation teams using inspectors from their and other B2 teams as appropriate.
- Actively manage investigations and direct the lines of enquiry.
- Conclude investigations and confirm any enforcement actions.
- Oversee investigation and prosecution training, coaching and mentoring.

B3/4s to:

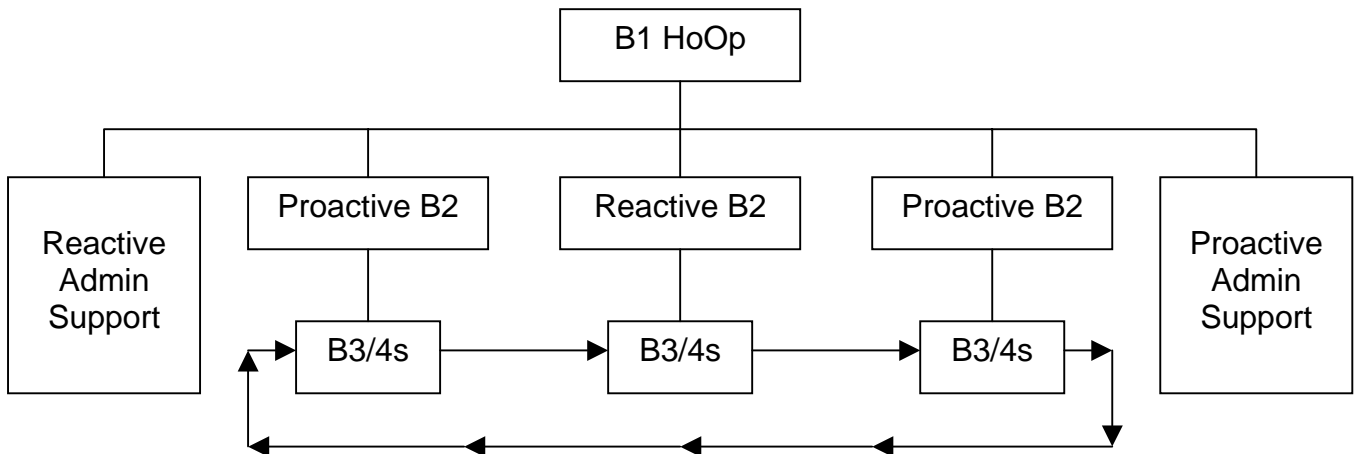
- Deliver interventions in support of FIT3 programme; undertake other frontline work.
- Deliver reactive work.
- Learning.

A Rotating Investigation Team Model

Overview

- Operational B2s are specialised managers of teams exclusively delivering reactive or proactive work.
- In each B1 unit there are one or more reactive teams.
- B3/4 inspectors are rotated between reactive and proactive teams on a rolling programme spending 4-6 months in each team.
- While operating within each team B3/4 Inspectors are line managed by the B2 of that team.
- B2s rotate between roles on a longer cycle. e.g. 3+ years managing each team.
- Specialised admin teams deal with all reactive for the B1 unit area.
- Investigation sign-off and approval of prosecutions performed by reactive B2s in other Divisional area.
- Reactive B2s in Division form RDM/peer review panel when necessary.

Organisational Structure



Roles

Reactive B2s to:

- Operate incident selection procedure
- Plan, manage, review and conclude investigations
- Sign-off investigations and approve prosecutions for reactive teams in other areas
- Oversee investigation and prosecution training, coaching and mentoring
- Implement and maintain continuous improvement
- Champion encouraged investigation/enforcement behaviours
- Capture and promote investigation/enforcement learning and achievements

Proactive Principle Inspectors to:

- Manage delivery of FIT3 campaigns, business group delivery plans, and other frontline work

B3/4 Inspectors in Reactive teams to:

- Investigate incidents and complaints; deliver resulting enforcement actions; learning and development

B3/4 Inspectors in Proactive teams to:

- Deliver interventions in support of FIT3 programme; undertake other frontline work; learning and development

Reactive admin support teams to:

- Provide pre-approval admin support and litigation team roles

Investigation Performance Dashboard				
FMU XX	B1 Unit XX	Division XX		
Reporting Period	01/10/2005	-	31/03/2006	
Investigations Completed	50	Improvement Notices	15	
Cases Approved	15	Prohibition Notices	3	
Overall Investigation Performance				
Investigations...	Total	Percentage	Target	Rating
With outcomes consistent with EPS	50	100%	100%	
Leading to health & safety improvements	42	84%	80%	
Of mandatory incidents	45	90%	95%	
Delivered in fit for purpose manner	44	88%	90%	
Initiated within 4 weeks of RIDDOR	50	100%	100%	
Closed within 3 weeks of initiation	30	86%	90%	
Cases were approved within 6 months	14	93%	100%	
Safety Investigations	35	Investigation site visits	75	
Health Investigations	15	Site visits per investigation	1.5	
Safety Cases Approved	12			
Health Cases Approved	3			
Improvement Notices Served	15	Safety Notices Approved	14	
Prohibition Notices Served	3	Health Notices Approved	4	