

OC 168/12 - Legal adviser's office enforcement and litigation team - Referral of cases to legal adviser's office

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Author Unit/Section: HSE's Legal Adviser's Office

Target Audience: All HSE Inspectors

1 This circular, which only applies to cases arising in England and Wales, sets out the types of cases which the Enforcement and Litigation team of Legal Adviser's Office (LAO) can (and, in some cases, must) deal with. Such cases fall into the following categories:

(1) Criminal cases which meet the criteria for ILO (see OC 168/11)
(2) Committals for sentence (where a solicitor agent was not instructed in the magistrates' court);
(3) Requests for general legal advice on enforcement matters;
(4) Advice on proposed Crown Censures.
Some cases must be referred to LAO; in others we can offer you advice as indicated below

Cases which must be referred

2 Criminal cases which meet the criteria for ILO must be referred to LAO in accordance with the procedure set out in OC 168/11. You are also encouraged to seek legal advice at an early stage in respect of cases which are likely to meet the ILO criteria. Experience has shown that early legal advice can assist you on evidential issues, which, in turn, will help to make your investigation more focused and effective.

3 Committals for sentence (where a solicitor agent was not instructed in the magistrates' court). Please refer such cases to LAO, preferably as soon as the magistrates have made the decision to commit for sentence to the Crown Court, but in any event within 7 days of that decision. LAO will provide paralegal support to prepare the necessary committal papers for the Crown Court and arrange legal representation.

4. LAO is the initial point of contact for civil litigation involving HSE although civil litigation against government departments is usually conducted by Treasury Solicitors.

Cases which may be referred

5 Appeals against enforcement notices are usually dealt with by the Inspector who may instruct a solicitor agent. However some serious or complex appeals against a notice may qualify for independent legal oversight. See 2 above

6. Although initial advice should be obtained through normal line management and FOD Team enforcement before referral to LAO, we can provide advice on a broad range of topics such as advice on legal issues arising from enforcement action and enforcement policy. You can e mail your query to the Legal Advisers office mail box at Legal.Advisers.Office2@hse.gsi.gov.uk

7. We also work closely with HSE's advisory and drafting lawyers located within Treasury Solicitors and if appropriate we may refer your query to them. There is guidance on working with HSE's lawyers at <http://intranet/legal/legaladvisor/index.htm>

8 If you require legal advice on a proposed Crown Censure we can assist with this.

9 Referrals should be made as follows:

1. ILO cases - see OC 168/11
2. Committals for sentence refer to Ian Johnson in the first instance.
3. Requests for general enforcement advice can be sent to Legal.Advisers.Office2@hse.gsi.gov.uk
4. Advice on proposed Crown Censures: refer to Katherine Skinner or Alan Fox in the first instance.

10 Please make contact with LAO by phone or email **before** sending cases or papers.