

Health and Safety Executive**Operational Circular****OC 440/35**

Review Date	21/02/2015	Open Government Status	Fully Open
Version No & Date	2: 21/02/2005	Author Unit/Section	CACTUS

Target Audience:
HSE Inspectors
Gas Officers

GAS SAFETY – ALERTING MEMBERS OF THE PUBLIC TO INSTALLER INCOMPETENCE

This OC gives advice to inspectors on how to determine the limits of a gas investigation and what they should do if it is felt necessary to advise past clients of an installer to get their appliances re-tested.

INTRODUCTION

1 The background to this OC arises from the investigation of two fatalities due to carbon monoxide exposure. The deaths occurred shortly after some minor repairs were carried out to a boiler by an installer. The installer had issued gas safety

certificates for appliances in four other properties owned by the same landlord. These were inspected, and three of the four properties were found to have appliances classified as “immediately dangerous”.

2 To secure evidence to support a case for manslaughter, and because of their concerns about any “duty of care”, the police arranged for visits to be made to more than a hundred other properties where the installer had done gas work. As the installer was Council for Registered Gas Installers (CORGI) registered, this was carried out by a team of CORGI inspectors who found “immediately dangerous” appliances at 7 of the properties and “at risk” installations at a further 33.

3 Because of the extent of the poor workmanship found, it was deemed essential to warn all other clients visited by the installer within the previous twelve months. They were written to, and advised that they should have their appliances checked, the letter being signed by representatives of the police, HSE and CORGI. Follow up procedures were put in place. It

was possible in this case to identify other clients through available records kept by the installer. However, this was an unusual case.

4 The advice given below sets out the factors to consider in determining the limits of a particular gas investigation, and what inspectors should do if they feel that alerting members of the public is appropriate.

HSE's LEGAL RESPONSIBILITIES

5 Solicitors Office has advised that, as a general rule, public authorities such as HSE do not owe a (civil) duty of care to members of the public in the carrying out of their functions. The exercise of discretion conferred by statute has generally been regarded as being the exclusive domain of the public authority to which it has been directed (and not the court's). Therefore, nothing the authority does within the ambit of that discretion should attract civil liability unless the decision is so unreasonable that it falls outside its ambits. In the case mentioned in the Introduction, both the police and FOD, following legal advice, felt that it would have been **unreasonable** not to take action to warn previous clients. This decision was primarily based on the overwhelming evidence of poor workmanship found at the visits to the five properties owned by the landlord. This does not mean that in future inspectors should always extend their investigation to include other premises or appliances dealt with by an installer. Under section 11(2) HSWA, HSC is under a duty "(a) to assist and encourage persons concerned with (health, safety and welfare.....,) matters to further those purposes;" The focus is on ensuring that employers and the self employed comply with their ongoing duties under HSWA and the associated regulations.

6 The Code of Practice under the Criminal Procedure and Investigations Act 1996, paragraph 3.4 obliges the investigator to "pursue all *reasonable* lines of enquiry.... What is reasonable in each case will depend on the particular circumstances."

7 There is no duty on HSE to investigate any previous activities unless they are a reasonable line of enquiry within the context of the current investigation. HSC's published Enforcement Policy Statement emphasises the need to be proportionate, consistent and transparent. Paragraph 33 also sets out the factors to be taken into account in making a decision as to whether or not to investigate, namely:

- the severity and scale of potential or actual harm
- the seriousness of any potential breach of law
- knowledge of the duty holder's past health and safety performance
- the enforcement priorities
- the practicality of achieving results
- the wider relevance of the event, including serious public concern.

ADVICE TO INSPECTORS

8 Gas investigations should be conducted in accordance with the Criminal Procedure and Investigations Act 1996 and the Enforcement Policy Statement, and any reasonable lines of enquiry should be pursued. This will include those that will provide the necessary aggravating features for sentencing purposes (as per *R v Friskies Petcare Limited*). We do not anticipate that an investigation into previous activities will form part of a reasonable line of enquiry, unless there is evidence to suggest poor workmanship at other properties to such an extent that the requirements of the Enforcement Policy Statement and the CPIA are not otherwise satisfied – as was the case with the investigation referred to above.

ALERTING MEMBERS OF THE PUBLIC

9 Under section 11(2)(c), HSC is under a duty to ensure that “...other persons concerned with any matters relevant to any of the purposes [of HSWA] are provided with an information and advisory service and are kept informed of, and adequately advised on, such matters...”. Since HSE exercises advisory powers on behalf of HSC (s.11(4)(a)), alerting members of the public to bad workmanship would fall within its advisory role. However, FOD inspectors should first consider whether there is any other responsible person/organisation who already has responsibility for, or would be better placed to, carry out this role. Where the installer is CORGI registered, details should be passed to CORGI. If the installer works for a company, that organisation should take any necessary follow up action with past customers.

10 Whilst there is a need to protect the public from potentially life threatening situations, any decision to issue an alert has to be weighed against the possibility that a criminal prosecution could be prejudiced leading to abuse of process arguments being raised at trial. There is also the risk of a claim for defamation.

11 Where, during the course of a normal investigation, an inspector discovers evidence to suggest that it would be unreasonable of HSE to ignore the risk to others, and that alerting the public is necessary, advice should be obtained from Solicitors Office.

RELATED SCENARIOS

12 There are other scenarios where a similar situation might occur. Sometimes HSE learns of a defective gas installation on an estate, and the evidence suggests that similar problems are likely to be present in other houses built or refurbished at the same time and by the same installer. In some of these cases, letters from HSE have been hand delivered to all other occupiers, advising them that there could be a problem. A point of telephone contact was given in the letter. No formal follow up action was deemed necessary. This approach appeared to work well.

13 In response to complaints about landlords not possessing, and or providing, a gas safety certificate, it is not considered necessary to ask for certificates relating to other properties owned by the same landlord unless this is necessary to meet the statutory requirements outlined above.

For further information contact John Bouckley or Noelle Walker in Nottingham

Date first issued: 21 February 2005