

Health and Safety Executive

Fee for intervention

Dry Run/ Shadow Run Interim Evaluation Report: FFI Implementation

Note: this is an interim report. The Health and Safety Executive's (HSE's) central Cost Recovery project team are still engaged in a continuous monitoring and evaluation process, developing actions as the evidence suggests them. HSE will continue this process throughout the Shadow Run and Implementation.

Some themes in this report show good progress, and these are reported on in a near final format. As this is an interim report, however, some areas are still progressing. For example, in some cases the findings of the evaluation have suggested actions on HSE but there has not yet been time for these actions to take effect. Both completed and progressing areas are reported on in full as far as this is possible. However, where further evidence will be delivered in the final report this is outlined throughout.

The final report will be published in due course, and will give a summary of the evidence gathered in the third phase of the evaluation filling the evidence gaps as they are indicated here.

CONTENTS

	Page
Section 1 Purpose, Methodology and Background	3
Section 2 Findings	5
2.1 Inspector Briefings and Guidance	5
2.2 Inspecting	5
2.3 Decision Making	6
2.4 Inspector/Duty Holder Relationships	7
2.5 Burden on Business?	7
2.6 Work Recording	8
2.7 Managing FFI	8
2.8 Specialists	9
2.9 Construction	9
2.10 Duty Holder Acceptance of FFI	9
Section 3 Conclusion	10

Section 1: Purpose, Methodology and Background

1. This section sets out the purpose of and background to the evaluation, as well as outlining information about research questions, methodology and what can be inferred from the sample.

Purpose:

1.1 This report provides an overview of the evaluation research into the Dry/Shadow Run of fee for intervention (FFI). It includes key findings from the Dry Run evaluation and first phase of the Shadow Run evaluation. It also presents HSE's response to the findings of this work, which is continuing to shape the Shadow Run and subsequent Implementation of FFI.

Background:

1.2 In March 2011, plans to extend cost recovery by HSE were announced. This included FFI, a scheme to recover costs from businesses and organisations (duty holders) found in material breach of health and safety law. In preparation for implementation, a Dry Run of FFI processes and procedures ran from October 2011- December 2011 and included approximately 90 inspectors from Corporate Science, Engineering and Analysis Directorate (CSEAD), Field Operations Directorate (FOD) and Hazardous Industries Division (HID) in the North East and South East regions. The Dry Run was followed by a Shadow Run, which started in January 2012 and will continue until implementation. The Shadow Run included the learning form the Dry Run and involved every member of HSE's operational staff.

1.3 The comprehensive evaluation of the Dry and Shadow Runs was designed to contribute practical, real time information to HSE's central Cost Recovery project team (CR team), with the aim of improving implementation and guidance as well as providing robust data to the Impact Assessment.

Research Questions:

1.4 For the Dry Run, a series of questions were developed. These covered several main areas: inspector briefings and guidance; internal HSE processes and procedures; inspectors' experience of the intervention process under FFI; effects of FFI on inspector attitudes and behaviours; and duty holder understanding and attitudes. There were also questions tailored to supporting the Impact Assessment, such as how long certain activities took staff and duty holders. The Shadow Run research questions were broadly similar, with changes of emphasis and additional questions to determine whether actions taken by the CR team (in the light of the Dry Run evaluation) were having an effect. As with the Dry Run, these questions looked both internally (at HSE's systems, processes, products and staff behaviours) and externally (at duty holder understanding, reactions and behaviours in relation to FFI).

Methodology:

1.5 A full evaluation of systems and processes was undertaken by a social researcher seconded to the CR team for both the Dry and Shadow Runs. The internally facing methodology developed during the Dry Run consisted of interviews and focus groups with staff, a quantitative questionnaire, analysis of EMM1¹ forms, quantitative analysis of COIN (HSE's work recording system), as well as systematic processing of management information. The externally facing methodology involved assessing, through in depth interviews, the attitudes of businesses that had been visited by inspectors during the Dry Run. Both the internally and externally facing

¹ The EMM (Enforcement Management Model) is a framework that helps users to apply consistent decision making processes to a wide variety of enforcement situations. It should not fetter inspectors' discretion to take enforcement decisions that suit the individual circumstances with which they are confronted. The EMM1 form is therefore a record of the basis of an inspector's regulatory decision making.

methodologies were repeated during the Shadow Run, with some changes of emphasis, and additional input from the Health and Safety Laboratory. Findings of different phases and strands of the research were broadly in alignment with each other, suggesting reliability.

1.6 An additional part of the methodology was an Issues/Actions/Decisions log. This tool was used to capture and track all issues raised, and fed back to the CR team and FOD/HID/CSEAD bilateral meetings for actions by the appropriate project leads. This meant that emerging issues could be noted and addressed quickly and appropriately, and then the effects of actions tracked through the implementation process.

Sample:

1.7 The sample for each element of the qualitative research was stratified to include as wide a range of inspectors and duty holders as possible. The inspector sample was stratified by region, band and division. The duty holder sample was stratified by size and sector and whether a material breach was found. Altogether, 72 inspectors and 45 duty holders were interviewed. This gave a good picture of the breadth of views across HSE and the businesses interviewed, whilst still allowing in depth exploration of issues. Although out of the 45 businesses interviewed, 35 were non-compliant, it should be noted that the less likely you are to have a positive attitude to health and safety, the less likely you are to participate in research.

1.8 Rather than conducting a very tightly structured, quantitative 'tick box' survey exercise, the sample and the question set for the interviews were designed to provide a rich insight into individual views, intentions, motivations and actions. The CR team regarded a rich statement about patterns of behaviour and causes for those patterns as more useful to inform policy than a statistically generalisable count of the numbers of people who held a particular view. However, this does mean that it is not possible to draw quantitative inferences that are generally applicable to the whole population of inspectors or businesses.

Section 2: Findings

2. This section presents the findings from the evaluation, and how HSE has responded to these. It is presented against a series of themes, which were developed based on analysis of responses to the evaluation. Where appropriate, these themes are subdivided (for example, to differentiate between opinions and behaviour, or to differentiate between inspector and duty holder views). In some cases, the issues raised in the Dry Run research have been dealt with and resolved, and the evidence has been gathered against this in the Shadow Run research. In these cases, the evidence is presented in the format: Dry Run research finding; HSE response; Shadow Run research finding; HSE response. In other cases, the findings of the evaluation suggested actions on HSE, but there has not yet been time for these actions to take effect. In these cases, the findings are presented in the format: finding; HSE response. This is an interim report, and a further report containing evidence against these findings will be released in due course.

2.1 Inspector Briefings and Guidance

2.1.1 Dry Run Findings

Inspectors prefer face to face briefing and interactive, workshop style sessions, rather than reading through guidance and 'chalk and talk'. The examples in the guidance were viewed as too 'easy' and straightforward. To access the guidance during the dry run, inspectors had to be invited to, sign up to and access an online 'communities' group. Inspectors said they had preferred to read a pack of guidance or have straightforward access to the intranet.

2.1.2 HSE response

For the Shadow Run, better case studies were developed and included in the revised inspector guidance. These were more in depth, more complex, better explained and worked through. The case studies were used during the Shadow Run briefings to illustrate key points of the guidance. The Shadow Run briefings were made longer and more interactive, and were designed to cover all the main points of the guidance, with opportunities to engage and ask questions. Guidance was e-mailed directly to participants ahead of the Shadow Run briefings and hard copies were available at the briefings. The guidance was also shared on HSE's intranet, rather than a communities site.

2.1.3 Shadow Run findings

Dry Run and Shadow Run briefings were generally well received by inspectors. Those involved in both the Dry Run and Shadow Run events recognised a clear improvement in the Shadow Run briefings. There was some evidence that although the Dry Run briefings were preferred by inspectors to the Shadow Run briefings, the latter were more effective in communicating about the core messages of FFI than the former.

2.1.4 HSE Response

This example of good practice has been captured and will be utilised in future change processes.

2.2 Inspecting

2.2.1 Evaluation findings

Inspector views: Inspectors reported that they would likely make marginal changes to the practice of inspection as a result of FFI. They reported that they would seek to minimise costs to duty holders where possible (within the bounds of the EMM). This may include actions such as

writing an instant visit report (IVR)² instead of a letter, since the former might be quicker. Inspectors also requested standardised paragraphs for letters and notices to make the process quicker, thus minimising costs.

Duty holder views: The findings from the inspector research were in contrast with the concerns raised in consultation and some duty holder interviews. Where inspectors wanted to minimise costs to duty holders where possible, duty holders expressed fears that inspectors would be overzealous in identifying material breaches that would trigger cost recovery.

2.2.2 HSE Response

HSE welcomes these changes towards getting to a speedier outcome to an inspection. HSE has longstanding frameworks to determine the most appropriate action for an inspector to take when faced with a contravention of the law and inspectors use a number of channels to communicate with businesses. As long as inspectors work within these frameworks, HSE encourages the use of the most efficient method of identifying and resolving contraventions of the law.

2.2.3 Further Evidence

The final stage of the FFI research will gather evidence about whether/how these issues play out in practice. This evidence will be presented in the final report.

2.3 Decision Making

2.3.1 Dry Run Finding

Inspectors' understanding of the application of the guidance was, to some extent, held back by the lack of formal opportunities to discuss it with their colleagues. This led, in some cases, to a lack of confidence with the using the EMM to make enforcement decisions in the FFI context.

2.3.2 HSE Response

During the Shadow Run, a series of regular peer reviews were implemented across HSE. These were designed to: provide a forum for discussion of the EMM guidance; ensure consistent understanding of EMM principles in an FFI context; monitor and review the consistency of decision making in practice; Provide a mechanism for the discussion of other key quality issues in the future.

2.3.3 Shadow Run Finding

Peer reviews were very popular, and there is strong evidence that they were also very successful in achieving their aims. Inspectors have a clear understanding of the guidance and are able to identify cases of material breach consistently. They are also confident that they are now using the EMM in a consistent manner. This confidence and consistency can be directly attributed to the peer reviews and the use of case studies in the briefings. There is evidence that the more FFI work inspectors have done, the more likely they are to feel confident with the use of the EMM in an FFI context.

2.3.4 HSE Response

The use of peer reviews as an effective tool to engage inspectors and increase their confidence and knowledge has been noted as an example of good practice. Peer reviews will continue throughout the Implementation of FFI, with the aim of quality assuring decision making in HSE as well as keeping inspectors informed about and engaged with change processes in HSE.

² An Instant Visit Report is an immediate written summary of an inspector's opinion of the issues requiring remedial action at an intervention, which is left with the duty holder when the inspector leaves. It does not require office time.

2.4 Inspector/Duty Holder Relationships

2.4.1 Finding

2.4.1.1 Inspector views: Inspectors expressed concerns that businesses may be less co-operative and less likely to listen to advice, as well as less likely to share 'sticky issues' for fear of these being identified as material breaches and subsequently being invoiced. Some inspectors were also concerned that they would be perceived as 'money makers' rather than health and safety regulators. Inspectors were also concerned about a potential increase in aggression from duty holders in the context of FFI, although when questioned most said they were confident that they had the skill sets to manage aggression where it occurred.

2.4.1.2 Duty holder views: The duty holder research did not suggest a big change in attitudes towards inspectors as a result of FFI, although there were some concerns that inspectors may make harsher decisions or increase levels of enforcement. Most businesses felt that if FFI is consistently and fairly applied, with inspectors making proportionate regulatory decisions, and so long as HSE's strategic priorities continue to be driven by improving health and safety outcomes, changes to the relationships between business and HSE will be minimised.

2.4.2 HSE response

Similar fears were voiced when HSE implemented its other cost recovery regimes. HSE has continued to maintain constructive relationships with these sectors. HSE has confidence that inspectors have the required skill sets to maintain these relationships. HSE has published an updated and revised 'Visiting Staff' supplement within its suite of safety policies, which addresses issues including lone working and personal safety. HSE will continue to monitor the issue of personal safety through the Shadow Run and Implementation.

2.4.3 Further evidence

All of the changes that inspectors and duty holders anticipated are, at present, not based on actual experience of FFI in practice. This is particularly salient here, as inspectors and duty holders anticipate different changes in the relationships. This means that no clear action on this issue is indicated by the evaluation at present. Throughout the implementation, these issues will continue to be monitored and evaluated. The final report will contain further information on these points.

2.5 Burden on Business?

2.5.1 Finding

It is useful in this section to separate out opinions (inspectors and duty holders) from reported behaviours (duty holders).

2.5.1.1 Opinions: Inspectors: Most inspectors were concerned that FFI would be an additional financial burden particularly on SMEs, possibly impacting HSE's reputation.

2.5.1.2 Opinions: Duty Holders: The duty holder findings were more mixed. Some duty holders agreed with the inspectors' view. However, other duty holders felt that because FFI targeted those in material breach, it would level the playing field rather than cause a burden.

2.5.1.3 Reported behaviours: Duty Holders: Some duty holders reported that they were already scrupulous about health and safety compliance and would not do anything differently as a result of FFI. These businesses tended to be already broadly compliant. They tended to welcome the scheme as a deterrent to those who currently 'cut corners' and save money on health and safety by failing to comply. Other businesses reported that as a direct result of FFI, they would be taking action to improve compliance such as reviewing safety systems or using the threat of FFI to persuade managers to invest in health and safety. There was strong evidence that these businesses tended to be non-compliant (i.e. they had a material breach when the inspector called). There was some suggestion that FFI had an additional galvanising

effect over and above the inspector's visit alone, and some inspectors reported using FFI as a lever to encourage businesses to comply.

2.5.2 HSE response

This shows that the implementation of FFI is likely to increase compliance amongst businesses by acting as a deterrent to those who do not comply with health and safety legislation, without placing a burden on compliant businesses. It is particularly welcome that businesses found in breach are not just expressing broad worries about potential costs of FFI; they are thinking about practical measures that they can take to protect their workers. Duty holders will only incur costs if they are in material breach of the law and compliant businesses will pay nothing. Businesses that rectify breaches quickly will incur lower costs.

2.5.3 Further evidence

The final stage of the FFI evaluation will gather evidence about whether/how these issues play out in practice. This evidence will be presented in the final report.

2.6 Work Recording

2.6.1 Finding

There was evidence of inconsistent understanding of work recording practices in COIN, for the purposes of FFI.

2.6.2 HSE response

An e-learning package has been developed to help inspectors understand work recording in an FFI context, and individual bespoke training has been offered locally to staff. Inspectors involved in the Dry Run shared their experience on work recording at the Shadow Run briefings. Some changes were made to COIN for the Shadow Run to make it easier to record. The CR team undertook systematic checking of inspectors' recording of time, including invoice comments. Feedback from these quality checks was given directly to inspectors and their line managers. The quality of inputting is being monitored on an ongoing basis through the line management chain, peer reviews and the centralised quality assurance process.

2.6.3 Further Evidence

Monitoring these issues will continue on an ongoing basis. The effectiveness of HSE's response will be reported on in the final report.

2.7 Managing FFI

2.7.1 Finding

There was evidence that some managers needed some additional support to help them deliver the requirements of FFI.

2.7.2 HSE response

Action is being taken through the line management chain to identify individuals who may be in need of additional support, which will be provided.

2.7.3 Further Evidence

This issue will continue to be monitored throughout the Shadow Run and Implementation, with an in depth evaluation of the effectiveness of management on FFI being undertaken. This evidence will be presented in the final report.

2.8 Specialists

2.8.1 Finding

There were issues raised both by specialists and by other inspectors about when and how specialist resources are engaged. Specifically, it is likely that the implementation of FFI will impose additional formality, discipline and clarity in both making the decision to call in a specialist and in the processes and procedures around working with specialists once that decision has been made.

2.8.2 HSE response

Processes and procedures on engaging and managing specialist assistance have been clarified and communicated with specialist and other HSE staff. HSE has emphasised that the implementation of FFI should not affect the interaction between inspectors and specialists, and managers will continue to ensure that where a specialist is needed, they are engaged.

2.8.3 Further Evidence

Monitoring of this will continue as FFI is implemented, and will be reported on in the final FFI report.

2.9 Construction

2.9.1 Finding

Construction inspectors reported facing similar issues to those faced by inspectors in geographical FOD. However, these issues are likely to be compounded, or to occur more often, because of the nature of construction as an industry (with more small businesses, more businesses co-operating on the same project, and more transient sites).

2.9.2 HSE response

HSE is aware that the issues are more complex in construction, and developed more complex case studies for the shadow run briefings and the guidance based on construction experience. HSE is also continuing to develop specific guidance in construction where many duty holders could be working together on a project,, and this will be shared in due course.

2.9.3 Further evidence

Construction specific evaluation will continue throughout the shadow run and Implementation.

2.10 Duty Holder Acceptance of FFI

2.10.1 Finding

Duty holder acceptance of the FFI scheme is enhanced by some key factors, including their knowledge of how the FFI scheme works and how transparent they feel HSE has been with them. Those who reported reading the leaflet were more likely to understand and back the scheme than those who had not. Although most duty holders understood that if they comply with the law, they would not have to pay, and were able to explain the 'concept' of material breach in general terms, they were not familiar with the technical terminology.

2.10.2 HSE response.

Inspectors have been consistently communicating the concept of material breach with duty holders in a way that they can understand. Duty holders having an understanding of the meaning of 'material breach' is much more important than their being able to 'parrot' the technical definition without understanding it. HSE is revising the duty holder guidance and leaflet with the aim of further clarifying the message for duty holders.

2.10.3 Further Evidence

No further evidence is being sought against this theme.

3. Conclusion

The Dry Run and Shadow Run have so far shown that the key to business acceptance of FFI is the clarity and transparency of their understanding about the basis for the invoice and being able to relate this to their experience of the inspector's visit. This understanding will be further helped by publication of guidance for business on FFI, which will be published well before the regulations are implemented. For HSE, there is a need to ensure that there is greater consistency in the recording of inspectors' work so that invoice comments are both clear and accurate. This, together with the efficiency of the cost recovery process and embedding understanding of how FFI will be applied in practice, will be the focus of HSE's efforts to ensure effective implementation between now and October.