

# **A Conference on Law Enforcement and Corporate Accountability**

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## **Preventative Inspections, Investigations and the use of Enforcement Powers**

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### **Brief Introduction**

Good afternoon, my name is Andy Lucas and I am an Environmental Health Officer working for Dudley MBC in the West Midlands. I specialise in health and safety enforcement and have also studied how local authorities are currently managing this important area of responsibility.

### **Preventative Inspections, Investigations and the use of Enforcement Powers**

Now I consider that my experience has given me a valid insight into this subject area as I have personally prosecuted a number of large, national companies for failure to comply with health and safety law.

I believe that the role of the enforcement officer is often subject to conflicting pressures when it comes to enforcement action. It is sometimes a case of "you are damned if you do and damned if you don't" for example some would argue that taking a prosecution is actually a failure in our role to work with industry to prevent non-compliance. Others may see prosecutions as the only way to ensure compliance by making an example.

This is only one of the many considerations facing enforcement officers today. I believe that the complex nature of our role in having to balance the improvement of working conditions with public expectation and the need to maintain consistency should not be underestimated.

### **Methods of Enforcement**

To measure and ensure compliance with the law as enforcement officers, we use a combination of programmed routine preventative inspections and accident investigation. And in some cases we take targeted and proportionate enforcement action where necessary to either punish or bring about compliance.

This can include the service of health and safety: -

- Improvement notices
- Prohibition notices

Or ultimately

- Prosecution

### **The Role of the Preventative Inspection**

If we look at the role of the preventative inspection..

By and large they have a number of important benefits: -

- Enable us to see what is out there (which is important considering the ever changing picture of UK industry especially with SME's popping up all over the place)
- Allows personal contact with companies and allows one to one interaction with Directors, safety reps and employees.
- Sometimes gives an excuse to visit (investigate complaints)

Most importantly of all

- Unique opportunity for companies to have access to free and unbiased health and safety advice (invaluable given the amount of legislation and Guidance)

So I think it is clear that the preventative inspection is of great value and something that should be encouraged rather than avoided. When I conducted my study into health and safety enforcement one of the overwhelming views of LA enforcement officers was that there was a real appreciation of the benefit of the preventative inspection. Certainly the HSC has given clear direction to all Las that we should have in place

- A system for a prioritised planned inspection programme according to hazard and risk. (Section 18 Guidance HASWA)

### **Prosecution**

I've mentioned prosecution, and the key point I would like to make is that the decision to prosecute is not taken lightly. It usually involves complex consideration of a number of factors some of which I have outlined in the following slide.

As enforcement officers we have to consider : -

- The HSC Statement on Enforcement Policy (requiring proportionality, consistency, targeting and transparency)
- The Enforcement Concordat (openness, promotes the idea of discussion before we reach a position of conflict)
- Crown Prosecution Service Guidance
- Public Expectation (becoming an ever increasing and significant consideration given our own transparent accountability)
- Human Rights Act and Police and Criminal Evidence Act ensuring that we perform our investigatory roles correctly

And in my own working environment I also have to consider

- West Midlands Health and Safety Group Enforcement Policy
- Dudley MBC Enforcement Policy

So I hope you can appreciate that in most cases it is not a simple black and white decision whether or not to prosecute, and I also hope you feel reassured that there is an awful lot of consideration before making these types of decisions.

### **Enforcement Powers**

Now before I conclude this section on enforcement I think it would be helpful just to briefly look at the powers of the Inspector.

To enable us to be effective, we use the powers set out in the Health and Safety at Work etc Act 1974, which can be briefly summarised in the following slide. I hope you will agree that these really are extensive and far-reaching powers.

#### Summary of Inspectors Powers

- At any reasonable time enter premises
- Take any person duly authorised to assist the Inspector
- Require premises to remain undisturbed
- Take photographs and measurements
- Take samples
- Take possession of any article
- Require a person to truthfully answer questions
- Require production of documents
- Provision of facilities

And finally

- Offence to obstruct officer

So when we look at Corporate Accountability and enforcement, I think it is clear that we do have adequate powers enabling us to effectively

- Assess compliance during targeted preventative inspections
- Investigate complex accidents

And in most cases,

- Take appropriate targeted enforcement action where necessary

However, to enable enforcement officers to actually **continue** to be effective, I believe that we need more than just these enforcement powers. We need both resources and a political desire to ensure that LAs continue with a comprehensive programme of health and safety enforcement.

Unfortunately I think there is little doubt that **through no fault of their own** local authorities are actually **struggling** when it comes to enforcing health and safety. And from the evidence of my study I believe this is due to the way in which this function is prioritised and consequently resourced by each LA.

### **Resourcing Health and Safety Within LAs**

If we compare local authorities with the HSE we see that HSE receives funding directly from the government, and also generates income by charging for services. In addition the HSC/HSE has also received an extra £63million (17%>) to increase the number of inspectors, investigations and prosecutions taken.

However in comparison, within local authorities, there is no recognised ring fencing of resources for health and safety enforcement.

The responsibilities of Councils are extremely varied, and the enforcement of health and safety is only a very small part of these responsibilities. Local authority priorities are affected not only by the needs of their local communities but also the political judgements of their elected Members.

Ever increasing cuts in budgets clearly places extra pressure on available resources and naturally these resources will be directed towards those activities that are under greatest scrutiny, for example food safety.

In a recent study commissioned by the HSE it was concluded that (in **1998** entitled **Management of Health and Safety Enforcement in Local Authorities**)

**'..there was little evidence of an active interest from Members in the health and safety inspection and enforcement responsibilities of their authorities'**.

**'..there was no evidence of Members either initiating or encouraging any health and safety enforcement activities'.**

It concluded that

**'..this was likely to be due to the fact that other enforcement responsibilities such as food safety are viewed as being more important'.**

In my own study, it was interesting to note that 60% of the officers questioned felt that health and safety was under resourced where they work.

Now it may surprise many of you here today to learn that LAs do not actually have to meet any robust prescribed performance targets for health and safety inspection. For example, currently the major focus for the EHO is **food safety**. This is because each LA **MUST** now meet specific food inspection targets and clearly this is at the expense of health and safety enforcement.

These sentiments were echoed in the Better Regulation Task Force Review : Enforcement (1999) where it was suggested that : -

**'..food inspections of low risk category premises required by published performance indicators maybe carried out at the expense of health and safety inspections of high risk premises'.**

The obvious question is - is this acceptable?

The Health and Safety at Work etc Act 1974, **Section 18** requires Las to make '**adequate arrangements**' to enforce health and safety. The problem being there is no real measurable definition of '**adequate**'. Instead, Las have relied upon Guidance by the HSC to indicate what these arrangements should include and this is known as **Section 18 Guidance**. This means that there are clear inconsistencies in the way that different LAs staff and prioritise health and safety, which is alarming considering that there are almost 500 Las throughout the country potentially working to their own agendas.

Again referring to HSE commissioned study it stated that: -

**'..it was clear that similar authorities were devoting significantly different resources to health and safety enforcement.**

***York Consulting Management of Health and Safety Enforcement in Local Authorities (1998)***

As a result Las have been criticised.

In the Select Committee 4<sup>th</sup> Report the London Hazards Centre claimed that

*'..local government enforcement of health and safety legislation is poor',*

and the TUC expressed concern that..

*'..local authorities were shifting resources away from health and safety enforcement towards other areas of regulation'.*

*(Select Committee on Environment, Transportation and Regional Affairs Fourth Report : 2000)*

However in reality I believe that local authorities are probably in **the** worst position to be able to change the circumstances that have led to this criticism. This is because in my view local authorities are unable to resolve their resource pressures, as these matters are simply not within their control.

Having said that, this failure to prioritise health and safety enforcement **as** an important function of the local authority, is in my opinion **the** major obstacle to providing adequate resources to allow health and safety enforcement to be exercised in a comprehensive manner.

So what is the potential impact of this failure?

- **Less preventative inspections**
- **Less accidents investigated**
- **Fewer prosecutions**

And is there any evidence of this?

If we look at the HELA Annual Report 2001 it is clear that there is evidence to indicate that within local authorities there is currently an **unacceptable** general downwards trend in enforcement performance.

- Resources devoted to health and safety enforcement within local authorities has declined by over 25% in the last 5 yrs.
- Last year 44 people were killed in local authority enforced premises - a rise of 37.5% on the previous year.
- In 00/01 the number of visits made by LA inspectors fell by 19 000 on the previous year (313 000), and has fallen by over 100 000 in just 3 years.
- In 00/01 the number of enforcement notices served fell by 6%, and the number of informations laid has fallen by 3% compared with the previous year.

- In 99/00 the number of full-time equivalent officers enforcing health and safety within local authorities fell by 8% compared with the previous year and was now the lowest level since records began in 1987.

So to return to the previous slide it is clear that there is evidence of

- **Less preventative inspections**
- **Less accidents investigated**
- **Fewer prosecutions**

To give an example nationally there is about 1 FTE/1000 premises however in my own authority each FTE is now responsible for over 2000 premises. In Dudley we have 9 FTE officers for only 2000 food premises however there are only 3 FTE officers for over 6000 health and safety premises.

Now I do not believe that we should argue which is more important, food or health and safety, but surely there must be an argument for a shared status of importance?

### **Conclusions**

So what if anything is being done to address these problems?

### **Section 18 Guidance**

HSC has recently reissued its **Sec 18 Guidance** and it is clear that the new approach is sitting firmly within the framework of Best Value. Rather than specifying inspection targets similar to food safety, the Guidance refers to service plans, benchmarking and 5 yearly audits as well as prioritising inspection programs.

What is more promising is that HSC is planning to monitor more closely local authority performance and to target those who underachieve. In keeping with it's prosecution policy of naming and shaming HELA has also agreed to identify underachieving local authorities with recommendations for further action in an annual report prepared for the Commission.

Speaking with my LA hat on, I can confirm that we take our role very seriously. We accept the wholly understandable expectations placed upon us by both employees wanting a safer workplace, and the expectations of those who are affected by work related accidents who demand a thorough investigation and ultimately, appropriate and targeted enforcement action. However without the necessary resources, quite simply we are struggling and as we have **seen** this manifests itself in a reduction in enforcement performance as highlighted by the HELA Report.

So to conclude, I believe we are entering a new era in health and safety enforcement. The HSC has issued new enforcement guidance and there **is** an increase in public expectation and awareness of health and safety.

I believe that because of their expertise and geographical accessibility, LA enforcement officers are extremely well placed to deliver the service demanded by HSC and perhaps more importantly the public.

I believe that through **little fault of their own** las are struggling with health and safety. All I would ask is that more consideration is given to the pressures that Las are under, and consequently more is done to help them direct resources towards health and safety enforcement.