

CHESHIRE FIRE AUTHORITY

MEETING OF : PERFORMANCE AND OVERVIEW COMMITTEE
DATE : 16TH NOVEMBER 2016
REPORT OF : HEAD OF PROTECTION
AUTHOR : JAMES WILLMOTT

SUBJECT : PROSECUTIONS UPDATE

Purpose of Report

1. To present an update on Cheshire Fire Authority's (the Authority) audit activity and prosecutions under the Regulatory Reform (Fire Safety) Order 2005 (the Order).

Recommended: That

- [1] the contents of this paper be noted; and
- [2] this issue remains on the Performance and Overview Committee future work programme for annual review.

Background

2. The Order was introduced on the 1st of October 2006 and it had the effect of widening the range of premises that fire and rescue authorities had powers to inspect.
3. Investment in specialist training, the increase in the number of premises covered by the Order and an associated cultural change in enforcement approach has resulted nationally in an overall increase in the number of prosecutions for fire safety related offences.
4. Inspectors use nationally approved models to ensure enforcement conforms to the Government's principles of proportionality, targeting, consistency, transparency and accountability.
5. Depending on the seriousness of a regulatory breach, inspectors have a range of enforcement options extending from educate and inform, through to prosecution. This paper outlines the Authority's approach to prosecutions and the results of cases to date (attached as Appendix A).

6. The Order covers virtually all premises, other than single private dwellings. Whilst the fire and rescue authority for the area in which premises are situated is the enforcing authority there are a number of premises that are enforced by other agencies e.g. nuclear installations, Crown Premises and construction sites.
7. Despite the change in legislation, there remain a few 'overlaps' of legislation resulting in a lack of clarity as to who the correct enforcing authority is. Cheshire Fire and Rescue Service (*the Service*) has, therefore, developed partnerships with other agencies such as local authority housing departments and the Health and Safety Executive to simplify the process and to improve our service to customers.
8. There are approximately 33,522 non-domestic premises in Cheshire, however a number of these are very low level risk and would not generally attract a visit from the Service. 32,304 premises are currently known to the Service and new premises are being identified daily with intelligence sharing between agencies now routine; thereby ensuring continuous improvement of the management information.

Protection

9. Regulatory enforcement across these non-domestic premises is managed by the Head of Protection. The Protection department undertakes a routine, risk based programme of audits recording the results in a database comprising 31,695 premises.
10. The risk-based programme of audit and inspection is based on fire frequency data and guidance provided by the Department for Communities and Local Government (DCLG) supplemented by local intelligence and knowledge. The approach recognises and allows for targeted responses to trends in cause, location and vulnerable groups in specific geographical areas and business types.
11. Protection inspecting officers receive initial training on building construction, fire protection systems, fire development and how people react in the event of fire. Additional training is provided throughout an officer's career to maintain their knowledge and take account of developments in technology, incidents, national events, research and reports. Inspecting officers are audited annually by their line manager to confirm competency in the workplace.
12. In addition, Protection officers receive external training in investigative procedures, case file production and on giving evidence in court proceedings.
13. A key strand of the Protection strategy involves using a small 'Business Safety team' to proactively support businesses in Cheshire East, Cheshire West and Chester, Halton and Warrington. This proactive provision of advice, not only helps business and commerce to make their premises safe

from fire and arson, it also helps the Authority evidence a balanced approach between education and enforcement. This approach has been cited as best practice by a Department of Business Innovations and Skills report.

Enforcement Governance

14. There are a number of ways an inspector may become aware of an unsatisfactory premises, these include:
 - a programmed or random audit
 - following a fire
 - intelligence from other agencies
 - complaints
 - referrals from operational crews.

15. Inspectors have a range of enforcement options* which are:
 - educate and inform
 - agreed Action Plan
 - Statutory Notice identifying the nature of the corrective action needed
 - prohibition/restriction of use
 - referral to other agencies
 - simple caution
 - Alterations Notice
 - prosecution.

*(*These are not exclusive, e.g. prohibition notices that are not complied with could lead to a prosecution)*

Currently, the Service has 37 Enforcement Notices and 50 Prohibition Notices in force across the service area.

16. Fair and effective prosecution forms a legitimate element of the Service's strategy to reduce the risk of death and injury in the workplace through enforcement of fire safety law.

17. The Service seeks to ensure that legislation is enforced in an impartial way through effective policy and management procedures. Therefore, following an audit, inspectors assess the appropriate (or 'initial') level of enforcement using an electronic tool called the 'Enforcement Management Model'. Depending on the seriousness of the breach they consult with more senior colleagues who confirm or amend the initial enforcement level as necessary.

18. Prosecutions have serious implications not only for the person prosecuted, but for all involved, i.e. the casualties, witnesses and Service personnel. Inspectors therefore follow the 'Code for Crown Prosecutors' which

provides guidance to Authorities as public prosecutors. In the first instance it helps them decide whether it is in the public interest to proceed with the prosecution, that the correct person is prosecuted, the trial is carried out in a fair and just manner and that ultimately justice is seen to be done.

19. When a breach of the Order is deemed by officers to be so serious that prosecution is a probability, the inspector prepares a case file. This is reviewed by a specialist manager in Protection and discussed at the Protection prosecution monitoring meeting, where the Head of Protection and the Service's lawyer apply two tests to decide if the case should proceed:
 - The first is the 'evidential test', used to establish if there is a 'realistic prospect of conviction'; and
 - the second is the 'public interest test' which considers factors such as, whether the offence resulted in death, injury or near miss and the history of previous convictions, cautions or contraventions.

Formal approval to prosecute is then given by the Deputy Chief Fire Officer and the Head of Legal and Democratic Services.

Prosecutions summary

20. To date, Protection supported by Legal Services and external solicitors, have successfully prosecuted 24 businesses (and/or 'Responsible Persons'), since the introduction of the Order on the 1st of October 2006, (these cases are outlined in the Appendix attached). There were 6 other cases resulting in a 'simple caution' and a further 12 cases are currently in preparation.
21. Following each prosecution, the Service has secured extensive press coverage, providing public reassurance about its regulatory effectiveness and sending a clear deterrent message to other businesses.

Financial implications

22. The budget for prosecutions is reviewed monthly, both at the prosecution monitoring meeting and the department budget meeting held between the Head of Protection and finance officers.
23. Where the Authority successfully prosecutes cases it may be awarded costs to cover its own legal fees. The Authority maintains a prosecution reserve (currently standing at £248,150) with any awarded costs being added to the reserve to offset future prosecution costs, as these costs may be higher than the budget in any given year.
24. Fire and rescue authorities nationally are finding defence lawyers more willing to contest less well-defined areas of the Order. If the Authority was unsuccessful in a prosecution there may be an award of costs against the

Authority, which could be considerable. There is no specific budget for this, and first call would be against the prosecution reserve, although ultimately it may be necessary in such a case to call on the General Reserve.

Legal implications

25. The Authority is the main enforcing authority and has a statutory duty to enforce the Order and it is expected that the Authority will appoint inspectors to carry out this function.
26. Members of staff have been authorised in writing, issued with identification and have received training to carry out this function. Policies, procedures and guidance documents have been based on guidance from DCLG, the Chief Fire Officers Association and other government bodies and are available to all staff and are reviewed on a regular basis.
27. Adherence to legal requirements when undertaking prosecutions and investigations is vital in preserving the reputation of the Service. The aim is to guide, educate and assist commercial business owners to make their premises safe for users, employers and the wider community. The Service prosecutes only when appropriate and the prospect of success is high. More speculative or aggressive use of the Order in court could result in awards of costs against the Authority, reputational damage and resource implications which would affect the Service as a whole and not serve the public interest.

Equality & Diversity implications

28. Staff completing audits record equality and diversity information which is reviewed by the Head of Protection to identify any adverse implications. Due to an increase in serious fires locally and nationally which involve certain types of fast food outlets, officers have, over the last three years, visited more of these business to help them reduce risk and comply with regulations. This, in the most high risk premises, has resulted in an increase in prohibitions issued to businesses which are frequently owned and operated by members of Black and Minority Ethnic (BME) communities. Of the prosecutions to date approximately one third of these have been against business owned or operated by members of the BME community.

Environmental implications

29. Effective enforcement reduces the risk of fire and therefore contributes to reduced emissions, water use and CO₂ associated with transporting and producing re-building products.

BACKGROUND PAPERS: None