

CHESHIRE FIRE AUTHORITY

MEETING OF: PERFORMANCE AND OVERVIEW COMMITTEE
DATE: 10TH JULY 2024
REPORT OF: HEAD OF PREVENTION AND PROTECTION
AUTHOR: LEE MCGARITY

SUBJECT: PROSECUTIONS ANNUAL REPORT 2023-24

Purpose of Report

1. To present an update on prosecutions under the Regulatory Reform (Fire Safety) Order 2005 (the Order) during the financial year 2023-24.

Recommended that:

- [1] the content of this paper be noted; and
- [2] prosecutions remain 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 services had powers to inspect.
3. Depending on the seriousness of a regulatory breach, inspectors have a range of enforcement options available to them ranging from educate and inform, through to prosecution.

Prosecutions summary

4. Protection, supported by Legal Services and external solicitors, in the year 2023/24 undertook two prosecutions both of which were successful (Appendix 1) and successfully defended an appeal of an enforcement notice.
5. The Service secured extensive press coverage, providing public reassurance about its regulatory effectiveness and sending a clear message of deterrent to other businesses.
6. There are currently eleven cases in various stages of the prosecution process. These include four cases going to trial in the Crown Court and seven cases with suspects under investigation.

7. Of the eleven cases five of these were from the reporting year of 2023-24. The remaining six cases were brought before the last financial reporting period. In recent times Protection has seen a delay in getting prosecutions into court. This is mainly due to the backlog caused by Covid.

Financial Implications

8. Where the Service successfully prosecutes cases, it may be awarded costs to cover its own solicitor's fees and staff time. The Service maintains a prosecution reserve capped at approx. £300k (any additional costs are transferred to the general reserve). The reserve currently stands at £208,553.84 as of 31st March 2024. Expenditure for 2023-24 was £24,124.30.
9. The ongoing Beechmere prosecution is a high-cost prosecution in terms of our financial expenditure. Due to the complexity of this case and the need for legal input the costs incurred will continue to increase. The funding that remains in the reserve may cover the costs incurred for this case. The cost of this case may have implications on taking future prosecutions.
10. The costings incurred for the Beechmere prosecution have started to be invoiced by our external legal counsel with further costings anticipated. These invoices will be paid and included in next year's Prosecution report.
11. The recovery of costs following a successful prosecution can be problematic. The courts do not include any reference when sending costs to the Service which causes difficulties when attributing the monies to the relevant case. This has been raised with the court on several occasions with no change in process to date.

Legal Implications

12. 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 Service, reputational damage and resource implications which would affect the Service as a whole and not serve the interest of the public.
13. Protection staff undergo regular legal training to ensure they preserve the reputation of the Service and apply the Order in an appropriate manner. Protection Office Managers are also trained to a higher degree to provide assurance on any Prosecution Casefile that is brought against a business.

Equality and Diversity Implications

14. Due to an increase in serious fires locally and nationally which involve certain types of fast-food outlets, officers have, over recent years, visited more of these businesses to help them reduce risk and comply with regulations. This, in the most high risk premises, has resulted in an increase in enforcement action issued to businesses which are frequently owned and operated by members of Black, Asian and Minority Ethnic (BAME) communities. An Equality Impact Assessment for this work has been completed.

Environmental Implications

15. 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.

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BACKGROUND PAPERS: NONE

Prosecutions 2023-24

2023

1. Allium Bar and Grill – Chester



Two people sentenced for inadequate fire safety measures.

The former chef and owner of a Cheshire restaurant and a businesswoman who took over its running have been prosecuted for serious breaches of fire safety laws.

Appearing at Chester Crown Court on Tuesday (27 June), Mark Ellis, who owned the Allium Bar and Grill with Rooms in Tattenhall, and Deborah Cruse who later ran it, were given community orders and ordered to pay costs after both pleading guilty to charges under the Regulatory Reform (Fire Safety) Order 2005.

Cheshire Fire and Rescue Service launched an investigation into the premises in March 2019 after a member of the public staying in one of the five guest rooms raised concerns.

Inspectors found there was insufficient means of escape and poor fire detection and warning. There was no evidence of fire drills being undertaken, testing of warning systems or emergency lighting or of a suitable fire risk assessment.

Following the inspection, Cheshire Fire and Rescue Service ordered that two of the bedrooms could not be used until remedial work had been carried out. During a further inspection on September 5, 2019, officers found that two members of staff was staying in separate bedrooms and that its earlier prohibition notice had been breached.

Sentencing, Judge Recorder Lawrence MacDonald, said: "Fire is unpredictable and can widely and quickly spread and have unpredictable and often fatal consequences. But although offences were exposing people to risk, fortunately, there was not an actual fire that highlighted those risks. There was not actual danger experienced by

people trying to escape from a fire. It is just fortunate that a member of the public drew the attention of the fire and rescue service to these deficiencies.”

He ordered Mr Ellis to complete 65 hours unpaid work as part of a 12-month community order. Ms Cruse was given 130 hours unpaid work. Both were each ordered to pay Cheshire Fire and Rescue Service costs of £3,000.

The total staff costs attributed to this prosecution was £9489 following 220 hours spent building the casefile. This was a complex case involving several responsible persons who were denying their involvement with the running of the business at the outset. This resulted in a lengthy investigation to confirm responsibility under the Fire Safety Order.

2. Mollington Banastre Hotel, Parkgate Road – Chester



Chester hotel director prosecuted for serious fire safety breaches.

The owner of a Chester hotel has been ordered to pay a total of £67,000 for breaking fire safety laws.

Ashok Ummat, Director of Mollington Banastre Hotel & Spa, appeared in Chester Crown Court on Thursday, 16 November 2023, charged with three counts of serious breaches of the Regulatory Reform (Fire Safety) Order 2005 (FSO).

Warren Spencer, prosecuting, told the court that Cheshire Fire and Rescue Service inspecting officers found serious deficiencies and breaches of the FSO during the initial audit inspection on 28 June 2018.

These deficiencies included:

- inadequate means of escape from the first and second floors
- inadequate fire resistant 'compartmentation' to prevent the spread of smoke and fire

- poor electrical maintenance
- insufficient fire risk assessment
- no record of an emergency plan
- insufficient emergency lighting on the external means of escape from the first floor
- deficient fire doors
- insufficient records for fire alarm maintenance.

An action plan was agreed between the inspecting officers and Ashok Ummat on 24 July 2018 with a completion date of 1 April 2019 ultimately agreed to rectify the deficiencies.

After further inspection on 2 April 2019, inspecting officers served Mr Ummat with a prohibition notice under Article 31 of the FSO, prohibiting the use of several rooms for hotel accommodation. An enforcement notice was then issued on 5 April 2019 issuing a schedule of works to make the effected rooms safe before allowing people to stay.

This case had 258 hours attributed to it whilst compiling the case file. The total staff costs were £11,223. This was a complex case that needed an in-depth investigation involving other regulatory bodies who provided evidence in support of the case.

3. Athey Street Mill – Macclesfield (Appeal of Enforcement Notice)



Appeal to Enforcement Notice overturned and the Service awarded costs.

A converted mill in Macclesfield that now has eight flats within it has had an Enforcement Notice upheld when an appeal went to Magistrates court.

The Service attended a fire in flat four of the premises when fire crews identified possible issues and referred it into our local Protection team.

A joint visit was carried with Cheshire East housing officers also attending to check on compliance.

An enforcement notice was issued due to several deficiencies identified within the premises including;

- Inadequate fire alarm system
- Inadequate emergency lighting system
- Unsuitable fire risk assessment completed
- Inadequate protection of the means of escape
- Breaches of the compartmentation identified
- Inadequate co-operation and co-ordination between responsible persons

The responsible person for the premises, Mr David Jones, appealed the enforcement notice citing that the Service had no legal right to enter the flats.

The judge presiding over the case upheld the Service's issuing of the notice and ordered Mr Jones to pay the costs of £3,317.50.