

CHESHIRE FIRE AUTHORITY

MEETING OF: PERFORMANCE AND OVERVIEW COMMITTEE
DATE: 10TH JULY 2019
REPORT OF: HEAD OF PROTECTION AND ORGANISATIONAL
PERFORMANCE
AUTHOR: STEWART MARTINDALE

SUBJECT: ANNUAL PROSECUTIONS REPORT 2018-19

Purpose of Report

1. To present an update on Cheshire Fire Authority's (the Authority) prosecutions under the Regulatory Reform (Fire Safety) Order 2005 (the Order) during the 2018-19 IRMP period.

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 (See 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 33,000 non-domestic premises in Cheshire East, Cheshire West and Chester, Halton and Warrington (the Service Area). However, a number of these are lower level risk and would not generally attract a visit from the Service.

Protection

9. Regulatory enforcement across these non-domestic premises is managed by the Head of Protection and Organisational Performance. The Protection team undertakes a routine, risk based programme of audits and records the results of all inspections within an electronic database.
10. The risk-based programme of audit and inspection is based on fire frequency data and guidance provided by the Home Office and the National Fire Chiefs Council, 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. Our 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 assessed annually by their line manager to confirm competency in the workplace.
12. In addition, officers receive external training in investigative procedures, case file production and on giving evidence in court proceedings.
13. A key strand of Protection activity to keep people safe and secure from fire, involves using a small 'Business Safety Team' to proactively support businesses in the Service Area. 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 previously cited as best practice by a Department of Business Innovations and Skills report

(now known as the Department of Business, Energy and Industrial Strategy).

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; and/or
 - referrals from operational crews.

15. Inspectors have a range of options* available to them to address deficiencies which are:
 - educate and inform (often verbal);
 - Notification of Deficiencies;
 - agreed Action Plan;
 - statutory Enforcement Notice;
 - Prohibition/Restriction Notice;
 - referral to other agencies;
 - simple caution;
 - Alterations Notice;
 - prosecution.

*(*These are not mutually exclusive options, e.g. Prohibition Notices that are served could still lead to a subsequent prosecution)*

Currently, the Service has 23 Enforcement Notices and 58 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 the Protection team and discussed at the Prosecution monitoring meeting, where the Protection Manager and the Service's lawyer apply the two tests from the 'Code for Crown Prosecutors' 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 Assistant Chief Fire Officer and the Director of Governance and Commissioning.

Prosecutions summary

20. To date, Protection supported by Legal Services and external solicitors, have successfully prosecuted 25 businesses (and/or 'Responsible Persons'), since the introduction of the Order on the 1st of October 2006, (these cases are outlined in the Appendix A). There were six other cases resulting in a 'simple caution'.
21. Following each prosecution, the Service has secured extensive press coverage, providing public reassurance about its regulatory effectiveness and sending a clear message of deterrent to other businesses.
22. There are currently nine cases under investigation which may proceed to prosecution at a later date.

Financial implications

23. The budget for prosecutions is reviewed on a regular basis, at the monthly prosecution monitoring meeting and the departmental budget meeting (attended by the Head of Protection and Organisational Development and finance officers from Joint Corporate Services).
24. Where the Authority successfully prosecutes cases it may be awarded costs to cover its own solicitor's fees and staff time. The Authority maintains a prosecution reserve capped at £300k (any additional costs are transferred to the general reserve). The reserve currently stands at £295,187 - as at 04/01/19.

25. 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

26. The Authority is the '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.
27. 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 the Home Office, the National Fire Chiefs Council and other government bodies and are available to all staff and are reviewed on a regular basis.
28. 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 and Diversity implications

29. Staff completing audits record equality and diversity information which is monitored by the Head of Protection and Organisational Performance and informs the Service's Equality and Inclusion report. 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. Of the prosecutions to date approximately one third of these have been against businesses owned or operated by members of the BAME community.

Environmental implications

30. 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.

CONTACT: DONNA LINTON, CLEMONDS HEY, WINSFORD

TEL [01606] 868804

BACKGROUND PAPERS: NONE

Appendix A

Prosecutions to date (2006 to 2018)

2008

1. Centrol Recycling - Everite Road, Widnes

This company was audited in 2008 following a complaint by an employee and resulted in a Prohibition Notice being issued. The case resulted in a prosecution citing breaches of five articles. The court issued fines totalling £20,000 and awarded Cheshire Fire Authority (the Authority) £10,000 in costs.

2009

2. Belgrave Hotel - City Road, Chester

The Responsible Person was prosecuted in 2009 following a failure to comply with an Enforcement Notice issued in 2008. The court found in favour of the Authority issuing £3,000 in fines and £7,000 in costs.

2010

3. The Belfry House Hotel - Stanley Road, Handforth, Wilmslow

Issues were first identified by an operational crew carrying out an inspection and site specific risk visit in 2007. Breaches included failure to carry out a risk assessment, failure to install smoke detectors and failure to illuminate evacuation routes. Protection officers attended and confirmed the issues and the inspecting officer issued a Prohibition Notice. The case went to Crown court in 2010 and the Responsible Persons were fined £75,000 and the Authority was awarded £52,000 in costs.

4. P & S Ashley Timber - Norton Way, Sandbach

Following a complaint by a member of the public in 2008 an audit was conducted which led to a Prohibition Notice being served. This case went to Crown Court in 2010, where eight breaches of the Regulatory Reform (Fire Safety) Order 2005 (the Order) were prosecuted including no risk assessment, no fire-fighting equipment, no system of evacuation and no signage. The Responsible Person and his company were fined £80,000 and £50,000 in costs although the fine was subsequently reduced by the Court of Appeal to £40,000. Although the Service explored a number of routes to recover the costs, the Responsible Person served a custodial sentence of 365 days for non-payment of fines and therefore the costs awarded to the Authority are not now recoverable.

5. Meloni's - 75 Albert Road, Widnes

An audit at a Bed and Breakfast/Restaurant in 2009 resulted in eight breaches of the Order being found and a Prohibition Notice being issued. Subsequently, the court awarded fines of £6,000 and awarded the Authority £2,500 in costs.

2011

6. M & M Car Spares - Slutchers Lane, Warrington

Three breaches were brought, the main one being a breach of an Enforcement Notice continuing for almost 18 months. The Responsible Person was fined £1,950 for the three breaches plus £750 in costs.

2012

7. Haslington Hall - Holmeshaw Lane, Haslington

Following an audit of this grade 1 listed building a Prohibition Notice was issued to prevent the premises being used as guest accommodation. In January 2012 at Crewe Magistrates Court the Responsible Person was found guilty of nine offences and was fined £16,000 plus £7,800 costs.

8. Buffet City Takeaway - Newgate Street, Chester

In January 2010 an operational fire crew from Chester carried out a thematic visit and identified fire safety concerns which resulted in Protection officers issuing a Prohibition Notice. At Chester Magistrates Court in January 2012 the Responsible Person pleaded guilty to eight offences and was fined £20,000 plus £4,000 costs.

9. Win House - 66 Church Street, Runcorn

An audit of the premises resulted in a Prohibition Notice being issued. Following this audit in December 2010 a fire occurred at the premises and it was believed that the Prohibition Notice was being breached and additional contraventions were identified. In August 2012 at Warrington Magistrates Court the Responsible Person pleaded guilty to nine offences and received a £5,000 fine plus costs of £2,500.

10. House in Multiple Occupation - 199 Crewe Rd, Crewe

Following a tenant's complaint regarding fire safety breaches an audit was completed and significant issues identified. Joint working with Cheshire East housing led to a prosecution in October 2012. The house in multiple occupation which was operating without licence was served with a Prohibition Notice due to the seriousness of the fire safety breaches. The premises was being run by two brothers, one defendant was fined £45,000, the other £37,500 and both were ordered to pay £22,000 costs. The case attracted media interest from local and some national press.

2013

11. The Crossbar - Lovely Lane, Warrington

Fire safety problems were discovered during a post-fire inspection following a serious fire. The Responsible Person was running both a hotel and bar within the premises (one resident was using the sleeping accommodation at the time of the fire). The individual was prosecuted by the Service's internal solicitor with Warrington Magistrates court awarding 200 hours community service.

12. The Rams Head - Grappenhall, Warrington

Following a small fire a Protection inspector identified issues which led to a prosecution. The licensee pleaded guilty to four offences, was fined £100 per offence and £269 costs due to the individual having been declared bankrupt and on benefits. The owners, Punch Taverns pleaded guilty to one offence and were fined £2,000 and £8,000 costs were awarded. The fire risk assessor also received a 'simple caution' for an inadequate assessment of the risk of fire.

13. Rangemore Nursing Home - Knutsford

A resident lit an artificial cigarette and discarded it on the bed, which led to a fire. The nursing home staff evacuated two residents from the compartment, but were not able to carry out further evacuations due to the smoke produced by the fire. Operational Crews performed six rescues. The Responsible Person received a 12 month prison sentence suspended for two years, 66 hours community service and the Authority was awarded £68,362 in costs.

2014

14. Cheshire Fast Foods - Macclesfield

A fire in a flat above the takeaway premises required one female occupant to be rescued due to the lack of suitable means of escape. The Responsible Person was prosecuted and received a six month prison sentence suspended for two years, 150 hours of community service and the Service was awarded £1,000 in costs. In addition the company also received a fine of £5,000 and the Authority was awarded £2,000 in costs.

15. The Devonshire – Runcorn

Protection officers issued Prohibition and Enforcement Notices on the premises due to various serious fire safety risks. The Responsible Person was prosecuted and received a fine of £2,400 and was ordered to pay £2,100 in costs.

16. Kenyon Court - Widnes

Protection officers conducting a routine audit identified that the premises had been changed from an office block and was being used as a house in multiple occupation. A Prohibition Notice was issued due to serious fire safety risks and a further inspection identified that the notice was being breached. The Responsible Person was prosecuted and received a fine of £6,000 and the Authority was awarded costs of £4,000.

17. Spice of India - Warrington

Protection officers issued Prohibition and Enforcement Notices on the premises due to their concerns regarding the means of escape. A further inspection identified the premises was being used in breach of the Prohibition Notice and the Responsible Person was prosecuted and received a fine of £1,000 and the Authority was awarded £1,000 in costs.

2015

18. The Brecks - Warrington

Protection officers issued a Prohibition Notice on the premises due to their concerns regarding the lack of a suitable means of escape and alarm system. Subsequent inspections revealed that the premises was continuing to be used in breach of the notice and the Responsible Person was prosecuted and sentenced to six months imprisonment for each offence to run concurrently, suspended for one year. The Responsible Person was also awarded 256 hours unpaid work. The Authority was awarded £600 costs.

2016

19. Smallwood Homes (Thelwall Grange Care Home) – Stockton Heath

Following a small fire at the premises Protection officers issued an Enforcement Notice due to concerns with the fire alarms system and compartmentation not providing sufficient protection for residents. The company was prosecuted and fined £40,000 with the Authority being awarded costs totalling £19,283.

20. Minster Care Ltd (Croftwood Home) - Warrington

Protection officers inspected the premises in March 2014 and identified a number of serious fire safety deficiencies relating to the fire risk assessment, fire alarm, duty to take general fire precautions, evacuation procedures and training. The company received an Enforcement Notice and was subsequently prosecuted and fined £40,000 and ordered to pay £15,000 in costs after pleading guilty to the offences. An independent fire risk assessor was given a four month jail sentence, suspended for 12 months, and ordered to pay £1,000 costs after 'paying lip service' to assessing a Cheshire care home.

2017

21. Four Seasons (No. 9) Limited (Cyprus Court Care Home) – Crewe

A fire safety audit was undertaken by Protection officers on 7th March 2016 following a complaint received from a relative of a resident. Deficiencies were identified relating to compartmentation, means of fire detection and warning, means of escape; and evacuation procedures. The company was prosecuted and fined £50,000 with the Authority being awarded £9,000 costs.

22. Hospitality First Two Limited (Crewe Arms Hotel) - Crewe

A fire safety audit was undertaken by Protection officers on 3rd December 2015. Deficiencies were identified which posed serious risk to life from fire and a Prohibition Notice was issued. The deficiencies related to the means of escape, means of fire detection and warning, means of escape; and fire risk assessment. The company was prosecuted and fined £80,000 with the Authority being awarded £10,000 costs.

2018

23. Bispham Green Brewery Company Limited (The Wizard Inn) - Nether Alderley

A post-fire inspection was carried out by Protection officers at the premises. Deficiencies were identified which posed serious risk to life from fire and Prohibition and Enforcement Notices were issued. The deficiencies related to a lack of general fire precautions, inadequate fire separation, the fire risk assessment, means of fire detection and warning, means of escape, evacuation procedure, and safety training. The company was fined £4,250 per offence, totalling £38,420 (to be paid within 12 months with a £170 victim surcharge). The Authority was awarded £3,453 costs.

24. Haslington Hall (The Big Marquee) – Crewe

Following information received from Cheshire East Council the 'Big Marquee' at Haslington Hall was inspected by fire officers in August 2014. Deficiencies were identified which posed serious risk to life from fire and Prohibition and Enforcement Notices were issued. The deficiencies related to electrical safety, means of escape, means of available fire-fighting media, means of fire detection and warning, and the fire risk assessment. In September 2014 fire officers returned to the premises with a view to lifting the Prohibition Notice. They found a number of employees and members of the public preparing for a wedding the next day. Officers attended again in late September and October 2014 to find wedding receptions were still taking place.

Subsequently, a prosecution was taken against the Responsible Person (the Owner) who was prosecuted in respect of seven charges and sentenced to ten months' imprisonment. In respect of the breaches of the Prohibition Notice the Responsible Person was sentenced to a further ten months' imprisonment to run consecutive to the other sentence. In addition, the trading company Haslington Hall Limited were fined £1,000 in respect of nine charges. The Authority was awarded costs of £72,000.

25. Lavender House Residential Home Limited – Alsager

A fire safety audit was undertaken by Protection officers on 17th January 2017. Deficiencies were identified which posed serious risk to life from fire and a Prohibition Notice was issued. The deficiencies related to inadequate compartmentation and inadequate protection of the means of escape. The company was prosecuted and fined £40,000 with the Authority being awarded £13,626.83 costs. A case against the Fire Risk Assessor was discontinued as no evidence was offered.

Simple Cautions issued to date

In addition to the current case files which are being compiled, Protection officers have issued six simple cautions to premises across the Service Area.