

MALVERN HILLS DISTRICT COUNCIL
OCCUPATIONAL HEALTH AND SAFETY ENFORCEMENT POLICY

REVISED JULY 2004

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The Policy Statement

This policy describes the principles that form the basis for the enforcement of occupational health and safety legislation within Malvern Hills District Council. It complements the Council's Environmental Services (Environmental Health) Statement of Enforcement Policy and must be read in conjunction with that policy and has been guided by the Health and Safety Commission's Statement on Enforcement Policy. It also contains the organisation and arrangements to deliver the policy.

The policy has the full support and commitment of elected members of Malvern Hills District Council, senior management, the Chief Environmental Health Officers Group ('Chief Officers' Group'), and other officers who are responsible for implementing the policy.

The policy exists to serve a wide audience. Whilst the greatest use of the policy will be by enforcement officers, the policy is also relevant to managers, elected members, duty holders, the general public and other stakeholders.

The primary purpose of the policy is to comply with mandatory guidance (revised October 2002) that has been issued by the Health and Safety Commission under Section 18 of the Health and Safety at Work etc. Act 1974. In the view of the Health and Safety Commission, the following elements are essential for a local authority to adequately discharge its duty as an enforcing authority:

- a) a clear and published statement of enforcement policy and practice;
- b) a system for prioritised planned inspection activity according to hazard and risk, and consistent with any advice given by the Health and Safety Executive and Local Authorities Enforcement Liaison Committee (HELA);
- c) a service plan detailing the local authority's priorities and its aims and objectives for the enforcement of health and safety;
- d) the capacity to investigate workplace accidents, incidents of dangerous occurrences or cases of occupational ill health and to respond to complaints by employees and others against allegations of health and safety failures;
- e) arrangements for benchmarking performance with peer local authorities;
- f) provision of a trained and competent inspectorate, and,
- g) arrangements for liaison and co-operation in respect of the Lead Authority Partnership Scheme.

The policy is a valuable tool that can deliver many benefits, namely:

- √ It provides a framework that will promote consistency within and between authorities
- √ It creates a standard that can be maintained and improved upon together with the generation of performance indicators that will support a continual improvement in performance
- √ It is increasingly relevant in formal proceedings
- √ It can be audited internally and by other local authorities and agencies

- √ It can help to identify weaknesses within the organisation
- √ It promotes effective communication
- √ It will help the enforcement officers to prioritise workload
- √ It can raise the profile of occupational health and safety
- √ It is compatible with other frameworks such as Comprehensive Performance Assessment, Best Value, Enforcement Concordat, Framework Agreement on Local Authority Food Law Enforcement and others.

It is important that the policy reaches its target audience through a variety of mechanisms and that the stakeholders understand and accept the policy. The policy will be receptive to the views of regulated businesses and other organisations. Consultation with stakeholders will ensure that they understand the policy. The policy will be communicated effectively to all interested parties.

The provision of a safe and healthy workplace is of paramount importance and enforcement activities of Malvern Hills District Council will reflect this. The enforcement of occupational health and safety will be regarded with equal importance to other enforcement activities carried out by Environmental Services, such as food safety, licensing, **infectious disease control, pollution control, pest control, animal welfare** for the purpose of allocating resources.

Signed.....

Chief Executive

| | |
|-------------------|------|
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The Aims, Objectives & Scope of the policy

Aim:

The aim of this policy is to provide enforcement officers and other stakeholders with a clear framework that will guide enforcement activities relevant to the field of occupational safety and health and provide managers with a framework that will facilitate continuous improvement. The purpose is to improve occupational health and safety in key risk areas through the engagement of others

Objectives:

The aim will be achieved through the following objectives:

- ⇒ to provide the Head of Environmental Services and the Commercial Team Manager with criteria to enable them to prioritise the allocation of resources
- ⇒ to provide enforcement officers with criteria to enable them to prioritise workloads and improve consistency
- ⇒ to enable managers to monitor performance and benchmark performance with other local authorities
- ⇒ to provide a greater level of understanding for elected members of the local authority's role in terms of occupational health and safety
- ⇒ to enable the business community to acquire a greater level of understanding of the local authority's role in terms of occupational health and safety
- ⇒ to enable other stakeholders and people affected by work activities to acquire a greater level of understanding of the local authority's role in terms of occupational health and safety.

Scope:

The policy will cover all occupational health and safety enforcement activities that are undertaken by the Environmental Services Commercial Team of Malvern Hills District Council, **the basis of which is the Health and Safety at Work etc. Act 1974 and associated regulations.**

The Authority will only enforce health and safety within its field of responsibility, that is, activities/premises being within its geographical boundary; activities/premises, **eg. Offices, shops, leisure services, consumer services,** which are stipulated in the Health and Safety (Enforcing Authority) Regulations 1998 (as amended), or are locally agreed with the Health and Safety Executive.

Principles of Enforcement

The enforcement principles of proportionality, consistency, transparency, targeting and accountability, as outlined in HELA Local Authority Circular 23/17, will be adhered to. Malvern Hills District Council is also a signatory to the Enforcement Concordat and will ensure that the activities of the Environmental Services Commercial Team will reflect the principles of standards, openness, helpfulness and complaints. Decision-making will be achieved through the use of the Health and Safety Executive's Enforcement Management Model (EMM).

Proportionality

Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcing authorities to achieve compliance or bring duty holders to account for non-compliance should be proportionate to any risks to health and safety, or to the seriousness of any breach, which include any actual or potential harm.

Authorised officers will make a judgement as to whether an employer (or other duty holder) has acted 'so far as is reasonably practicable' or 'so far as is practicable,' where appropriate, by balancing the time, cost and effort expended in controlling the risk(s) with the risk to occupational safety and health

Consistency

A variety of circumstances will be presented to enforcement officers and a similar approach in similar circumstances to achieve similar ends in terms of advice, use of enforcement notices and decisions to prosecute will be taken.

Consistency will be achieved through a combination of:

- ⇒ internal audits
- ⇒ inter-authority audits as required by mandatory guidance issued under Section 18 Health and Safety at Work etc. Act 1974 to benchmark Malvern Hills District Council's performance with other local authorities
- ⇒ desk-top exercises
- ⇒ a liaison group that will comprise representatives of Bromsgrove District Council, Herefordshire Council, Malvern Hills District Council, Redditch Borough Council, Worcester City Council, Wychavon District Council and Wyre Forest District Council
- ⇒ multi-agency liaison
- ⇒ monitoring officers' work by the Commercial Team Manager
- ⇒ discussions and meetings between officers
- ⇒ reviews of enforcement activity within the Commercial Team against the enforcement policy
- ⇒ consultation with stakeholders
- ⇒ appropriate training

In some premises Malvern Hills District Council may have an interest. Where this is the case the enforcement policy and practices will be applied to the activity or premises in exactly the same way that they do in all other premises in accordance with HELA Local Authority Circular LAC 22/10 .

Transparency

Officers will ensure that they distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory.

Information and rights of appeal against formal action will be given in writing at the time the action is being taken.

The conduct of officers during inspections will reflect the principles outlined in Appendix 2.

Where Malvern Hills District Council has a management or ownership interest in premises for which it is the enforcing authority, the Commercial Team Manager must decide whether to transfer enforcement to the Health and Safety Executive. Malvern Hills District Council must be open and transparent about the involvement of the Health and Safety Executive in these premises. There shall also be a process for communication and liaison with Health and Safety Executive on such matters.

Officers shall comply with the disclosure of information provisions of Section 28 of the Health and Safety at Work etc. Act 1974, Data Protection Act 1994, Freedom of Information Act 2000 and Human Rights Act 1998. This will be particularly relevant where an injured party wishes to pursue a civil claim for compensation. It will normally be appropriate for officers to provide a factual report.

Officers shall comply with the Regulation of Investigatory Powers Act 2000 (RIPA) and any associated Codes of Practice or Guidance in accordance with the Malvern Hills District Councils Policy and Procedures, where covert surveillance is to be used. This will ensure that investigations carried out strike a balance between the rights of individuals and the legitimate interests of the public.

Where a business is not satisfied that procedures have been followed it may, in the first instance, make representation to the local authority which will investigate the complaint. Details of the complaint procedure are available to the public by visiting the customer contact centre, by requesting the procedure in writing, by telephone or via the council web site www.malvern hills.gov.uk In the unlikely event that the complaint still exists, the business may approach the Local Authority Unit (LAU) of the Health and Safety Executive. The LAU will aim to resolve the dispute directly with the local authority. If it cannot resolve the matter it will report the matter to the Health and Safety Commission.

Targeting

Malvern Hills District Council will target its approach to enforcement of health and safety legislation according to risk. As such:

- Routine inspections of premises will be targeted on those employers whose activities give rise to the most serious risks or where hazards are least well controlled. This will be achieved through a

risk-based, priority planning system. The minimum inspection frequency of inspections will be determined by the risk category of the premises as described in Appendix 1;

- Complaints relating to unsafe working practices or poor working conditions will be investigated in line with the standards given in Appendix 1;
- Accidents will be investigated having regard to HELA LAC 22/13 in line with the standards given in appendix 1;
- Local occupational health and safety needs will be reflected by the work of Malvern Hills District Council;
- Visits to premises may be combined with visits for other purposes such as enforcement of food hygiene, licensing and other matters;
- Alternative methods of inspection in low risk category premises may be considered in order to allocate greater resources to control of higher risks;

The Commercial Team Manager will provide criteria and guidelines for the officers to follow in order to assess the most appropriate course of action to be taken according to the '*risk gap*' (i.e. the gap between the actual risk and the standards that are expected) and levels of non-compliance with the law.

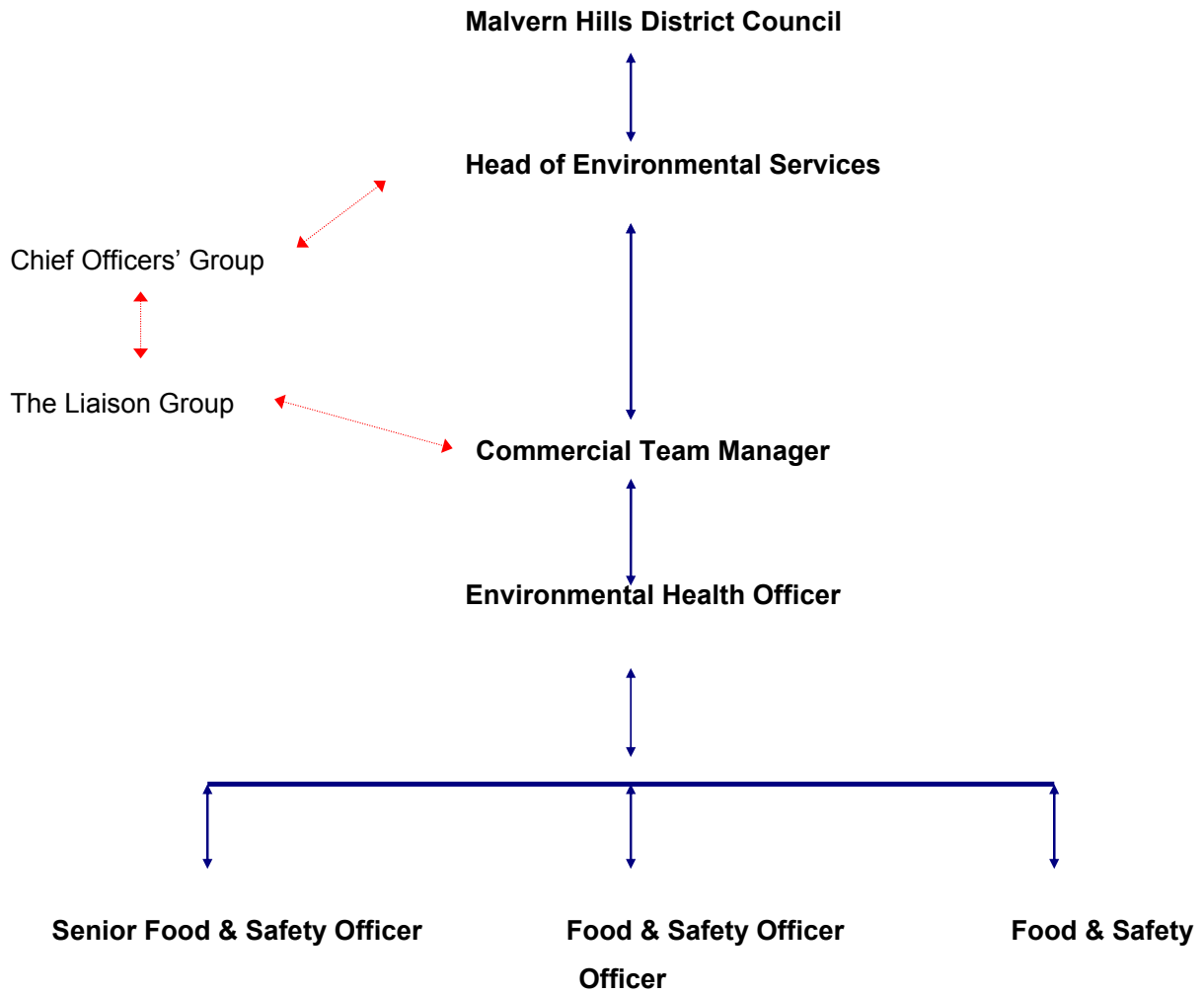
The work of the Commercial Team will also take account of any strategy and guidance from the Health and Safety Executive, Health and Safety Commission and HELA.

Accountability

Regulators are accountable to the public for their actions. This means that enforcing authorities such as Malvern Hills District Council must have policies and standards (such as the four enforcement principles above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints. Malvern Hills District Council has a formal complaints procedure that is available separately.

Organising to Deliver the Policy

The diagram below shows the organisation for delivering *the policy* within Malvern Hills District Council.



Roles and Responsibilities

The **Council** has overall responsibility for the determination and implementation of *the policy* within the area it administers and will:

- establish the importance of enforcing occupational health and safety in relation to
 1. the Council's overall performance objectives
 2. national health and safety standards set by the Health and Safety Commission
- allocate sufficient resources for the enforcement of occupational health and safety legislation

The **Head of Environmental Services** is responsible for:

- setting occupational health and safety objectives
- allocation of departmental resources

The **Commercial Team Manager** is responsible for:

- communicating the policy to stakeholders
- ensuring the policy is implemented within the team
- monitoring the performance of the team
- ensuring that the inspectorate is competent and appropriately authorised
- provision and maintenance of information systems and sources including maintenance of an up-to-date set of HELA Local Authority Circulars and/or access new circulars from the relevant websites, and disseminate such information to officers, as necessary.
- making arrangements for the identification of the relevant Lead Authorities

The **Commercial Team Officers** (*consisting of the Commercial Team Manager, 1 Environmental Health Officer, 1 Senior Food and Safety Officer and 2 Food and Safety Officers*) are responsible for:

- delivering *the policy* to businesses and other relevant stakeholders

The **Chief Officers' Group** is responsible for:

- ensuring compliance with national health and safety standards set by the Health and Safety Commission;
- co-ordinating the management of occupational health and safety enforcement activities across the counties of Herefordshire and Worcestershire;
- directing the activities of the Liaison group.

The **Liaison Group** will report to the Chief Officers' Group and is responsible for consistent implementation of occupational health and safety enforcement activities across the counties of Herefordshire and Worcestershire through:

- disseminating information to respective local authorities
- sharing examples of good practice
- carrying out inter-authority audits
- updating the policy
- developing and issuing the policy, instructions and guidance on behalf of the Chief Officers' Group

Arrangements to Deliver the Policy

The arrangements for the management of occupational health and safety enforcement comprise communicating the policy, delivering the policy, monitoring performance, review and audits

Communicating the policy

The policy will be brought to the attention of all stakeholders by the Commercial Team Manager in accordance with Malvern Hills District Council's Equal Opportunities Policy and the Communication and Consultation Policy and Strategy.

Delivering the policy

Responsibilities and powers of officers and managers are clearly defined within the policy or referenced elsewhere within internal procedures. There will be a clear authorisation policy for officers that is linked to competency, qualifications and experience for enforcement action.

The Commercial Team Manager will ensure that arrangements are made to measure the competency of the enforcement officers and ensure that they are competent in accordance with Health and Safety Commissions' Section 18 mandatory guidance.

A record of officer's qualifications and professional development in connection with health and safety is kept up-to-date by the Officer and the Commercial Team Manager.

The Commercial Team Manager will devise suitable management systems to ensure that enforcement officers receive and apply HSE/HELA guidance.

Authorised officers will carry out proactive work to include occupational health and safety inspections of undertakings in accordance with Appendix 1 and taking part in national and local initiatives depending upon the resources available.

Existing approaches to enforcement will be assessed to identify how the HELA strategy can be used to inform Malvern Hills District Council's work plan. This will include, for example, the development of strategies to help small firms to comply with health and safety legislation and a system for reporting back to HELA.

Authorised officers will also undertake reactive work such as responding to requests for information and advice; investigation of accidents and complaints; and respond to other emergencies.

The HSC'S Strategic Plan recognises that it is neither possible nor necessary for the purposes of the Act to investigate all issues of non-compliance with the law which are discovered in the course of a preventative inspection or in the investigation of reported events. Incidents are investigated to highlight appropriate practice, to prevent recurrence and to put gross breached of legal duty before the courts.

Enforcement Options

All enforcement action can be defined as informal or formal action.

Informal action may consist of:

- Advice given verbally during or after an inspection or visit to a premises
- A letter, which outlines deficiencies of a non-serious nature or provides advice

Formal action can take the form of:

- Prosecution
- Formal caution
- Prohibition Notice
- Improvement Notice

Council Enforcement Officers will use discretion in deciding whether to initiate a prosecution. They will consider whether circumstances warrant an approach other than formal action which may promote health and safety more effectively.

Prosecution will be considered when:

- there has been an accident resulting in death or serious injury
- there have been a number of similar accidents of a similar nature and no preventative action has been taken
- when there has been failure to comply with an Improvement Notice or Prohibition Notice
- when there are flagrant breaches of health and safety legislation and/or previous warnings have been given
- where there is potential for considerable harm arising from the breach
- where the gravity of the offence, taken together with the general record and the approach of the offender warrants it
- where there is a need to draw attention to the need for compliance with the law, a prosecution is expected, or where others may be deterred from similar failures to comply with the law

The decision to prosecute will also take into account the Code for Crown Prosecutors, which sets out the evidence and public interest tests.

The service will always seek to recover the costs of investigation and court proceedings.

Where there has been a breach of the law leading to a work related death, officers will consider whether the circumstances of the case might justify a charge of manslaughter. A protocol exists for liaising with West Mercia Police Authority and HM Coroner for Worcestershire if evidence is found suggesting manslaughter

Formal cautions may be considered in certain specific instances. The following criteria will be used to assess its suitability:

- a conviction should be more likely than an acquittal before a court

- the offender must admit the offence
- the offender must agree to be cautioned

Prohibition Notices will be served by Authorised Officers when they are of the opinion that an activity (or activities) carried on at a premises involve or will involve a risk of serious personal injury or ill health.

- the number of people affected by the risk is not relevant
- the risk does not necessarily have to be imminent but where action has to be taken without delay to control the risk
- deferred Prohibition Notices will be served when a greater risk would result if that activity was stopped immediately

Improvement Notices will be served by Authorised Officers when one or more of the criteria below apply:

- significant contraventions of health and safety legislation and they are likely to continue
- one or more health and safety contraventions have occurred and they are likely to be repeated
- lack of confidence in the business/proprietors organisation of health and safety management
- the business/proprietor has a history of non-compliance
- standards are generally poor and the business/proprietor has little awareness or appreciation of their legal duties or of statutory requirements
- effective action needs to be taken to remedy conditions that are serious and deteriorating
- when there is a risk of ill health or injury but not so as to warrant a Prohibition Notice

Monitoring performance

A variety of mechanisms will be used to monitor the delivery of *the policy*. Significant outcomes will be communicated to appropriate stakeholders.

Review

The policy will be reviewed annually.

Audits

The policy will be audited.

The liaison group will arrange inter-authority audits in order to measure the extent to which respective local authorities are complying with the requirements of Section 18 Health and Safety at Work etc. Act 1974 and associated mandatory guidance.

Acknowledgements

Malvern Hills District Council wishes to thank members of the Herefordshire and Worcestershire Health and Safety Enforcement Officers Liaison Group for their contribution to this policy

References

1. Enforcement Policy Statement, Health & Safety Commission HSC15 01/02

Bibliography

Auditing Framework for Local Authorities' Management of Health and Safety Enforcement HELA 2000

Health and Safety Commission Strategy on Health and Safety Training : LAC 84/3 rev.

EN 45005 : 1995 A Framework for Managing Local Authority Food Hygiene Inspections.

Managing Health and Safety Enforcement (CIEH Course Notes).

LA Enforcement in premises in which they may have an interest : LAC 22/10 (2000)

Health and Safety Executives Policy and Practices on the Disclosure of Health and Safety Information : LAC 61/1

Health and Safety in Local Authority Enforced Sectors - HELA National Picture 2000.

Appendix 1 - Minimum Inspection Frequencies and Standards

Premises are grouped into 3 main risk bandings namely, band A (highest hazard/risk), band B (intermediate hazard/risk) and band C (lowest hazard/risk), with band B being sub-divided into 4 groups i.e. B1, B2, B3, and B4.

| CATEGORY OF PREMISES (Risk Score*) | MINIMUM INSPECTION FREQUENCY |
|------------------------------------|------------------------------|
| A (>186) | 1 YEAR |
| B1 (171 – 185) | 2 YEARS |
| B2 (156 – 170) | 3 YEARS |
| B3 (141 – 155) | 4 YEARS |
| B4 (121 – 140) | 5 YEARS |
| C (<125) | 6 YEARS |

*LAC67/1, Advice to Local Authorities on Inspection Rating Programmes and a Priority Rating System gives an explanation of how risk scores are calculated using various parameters such as safety hazards, health hazards, safety and health risks, welfare, public risk, and confidence in management. Having due regard to the risk, the inspection of premises will be carried out at the frequency given in the table above.

Where it is not appropriate to carry out planned, routine inspections of low risk premises (eg. category C) a self-assessment questionnaire may be sent to the undertakings for completion and returned to the Commercial Team. Authorised officers may carry out a routine inspection of 10% of respondents and all businesses that do not respond. The questionnaires cover all relevant aspects of health and safety management and may require the submission of further documentary evidence.

Standards

1. To respond to complaints about health and safety practices, procedures and conditions within 2 working days of receipt or more quickly in urgent cases.
2. To respond to requests for advice and information within 2 working days of receipt.
3. To respond to and investigate reports of a death, major injury, case of work related ill health, dangerous occurrence or accidents within 2 working days or more quickly in urgent cases.

Appendix 2 - Conduct of Inspections

- The purpose of planned, routine inspections is to identify risk gaps and non-compliance with legal requirements. This is reflected in what officers do, look for and ask.
- Inspections of premises will normally be unannounced unless it is necessary to see a particular person or process. In these circumstances, the officer may make an appointment.
- Any applications/permits for specific activities will be processed efficiently and accurately.
- Visits will be made during normal opening hours unless it is necessary to enter at other times.
- At the beginning of the inspection, officers will identify themselves, and give a copy of the leaflet “What to expect when a health and safety inspector calls” to a responsible person.
- At the end of routine inspections and other visits officers shall leave their contact details on site (e.g. business card or Report of Visit) and if requested details of this Enforcement policy.
- Officers will help employers (and other duty holders) to understand what is expected of them and what they should expect from their enforcing authority. If available, advisory leaflets will be supplied to assist in compliance. Any letters will be written in plain English without unnecessary technical or legal jargon.
- Officers will discuss the proposed courses of action with the proprietor, where appropriate, and take the employer’s views into account.
- Following the inspection, a written report shall be sent to the business within one week. This shall include:
 - name of officer
 - names of persons interviewed
 - evidence taken e.g. photograph
 - date and time of inspection
 - areas inspected
 - action required, (what, why - details of legislation, contravened, when, - deadlines)
 - consequences of failure to comply
 - recommendation
 - information on useful publications where appropriate
- All correspondence between officers and duty holders will make a clear distinction between what duty holders have to do to meet their legal obligations and recommendations of best practice.

- Businesses must be informed, in writing, of the appeal mechanisms when enforcement notices have been served on them. This should explain the following:
 1. how, where and within what period of time an appeal can be made.
 2. that action required by Improvement Notices is suspended while appeal is pending
 3. that businesses can apply to an Employment Tribunal for Prohibition Notices to be suspended pending an outcome
- When seizure powers are used, officers will serve a “Notice of Taking Possession and Detaining” on the proprietor at the time (where appropriate) and confirm, in writing, within ten days, the items that were seized and the reasons for seizure.

CONSULTATION WITH EMPLOYEES

Officers will provide information to employee representatives and/or safety representatives following an inspection or accident investigation.

LEAD AUTHORITY

Officers will consult the relevant Lead Authority body when considering formal action against a duty holder (except where immediate action is considered necessary), where shortcomings are identified having significance at a national level, or following the investigation of any death, major injury, case of work related ill health or dangerous occurrence reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 [see LAC 44/3].

A record of the contact will be kept on the property file

AGENCY WORKERS

Following a fatality or reportable major injury to an employee who is employed by employment agency, an officer will notify the Employment Relations Directorate of the Department of Trade and Industry. This requires close liaison with the Department of Trade and Industry to ensure that decisions on action are co-ordinated and timely. [see LAC2/4 (September 2000)]

The Commercial Team Manager will make arrangements to mitigate the effects of pressures that might affect an inspector’s judgement. These may include:

- lack of familiarity with a process or situation (e.g. lack of competence).
- lack of resources (e.g. pressure to concentrate on other priorities such as food safety)
- relevant personal relationships
- relevant history (e.g. where an inspector has worked for the organisation previously)
- financial and other interests of the officer in a competitor business to those inspected
- service contracts operated at a business by other sections of the same local authority department e.g. pest control contract.

APPENDIX 3 – LIST OF CONSULTEES

CHAMBER OF COMMERCE AND BUSINESS LINK

ADVANTAGE WEST MIDLANDS

FEDERATION OF SMALL BUSINESSES

RELEVANT TRADE UNION ORGANISATIONS

HEALTH AND SAFETY EXECUTIVE

VISION 21 PARTNERS

LICENSED VICTUALLERS ASSOCIATION

LOCAL TOWN AND PARISH COUNCILS

APPENDIX 4 – GLOSSARY OF TERMS USED IN PRINCIPLES OF ENFORCEMENT

PROPORTIONALITY

Proportionality means relating enforcement action to risks to occupational health and safety.

CONSISTENCY

Consistency does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends.

TRANSPARENCY

Transparency means helping duty holders to understand what is expected of them and what they should expect from the enforcing authorities, making it clear what they have to do and where relevant what they do not.

TARGETING

Targeting means making sure that contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled: and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it - whether employers, manufacturers, suppliers or others.

ACCOUNTABILITY

Accountability means being able to demonstrate that a responsible approach has been taken.