

**REPORT TO:** Safer – Policy and Performance Board

**DATE:** 21<sup>st</sup> September 2010

**REPORTING OFFICER:** Strategic Director – Environment & Economy

**SUBJECT:** Regulation of Health and Safety at Work in Halton- Annual Plan

**WARDS:** Borough Wide

## **1.0 PURPOSE OF THE REPORT**

- 1.1 To invite the Board to comment on Health and Safety Plan for the forthcoming year
- 1.2 To provide the Board with an update on the work of the Health and Safety Enforcement team in the Environment and Regulatory Services Department.

## **2.0 RECOMMENDATION: That**

- (1) the report and attached plan be noted and that any comments the Board wish to make, be reported to the Councils Executive Board Sub Committee when they consider the Plan for endorsement.

## **3.0 SUPPORTING INFORMATION**

### **3.1 Background**

3.1.1 The Health and Safety service which sits within the Environment and Regulatory Services Department is responsible for enforcing health and safety law in approximately 1600 business premises in the Borough. This is a statutory function with enforcement responsibility shared between the authority and the Health and Safety Executive. Local authorities are responsible for catering, leisure, service sector, warehousing and distribution whilst the Health and Safety Executive are responsible for manufacturing, construction and specialist areas such as railways.

The overall objective of the service is to ensure compliance with Health and Safety law and thereby prevent deaths, accidents and ill health associated with workplaces.

Health and Safety law places a duty on employers to protect the health and safety of employees and members of the public who may be affected by their activities. In recent years the concept of “health and safety” has suffered from a poor public image due to a perception of disproportionate and overzealous application of health and safety rules. However, many of these health and safety “rules” are a product of civil claims for negligence which are often

settled by insurance companies out of court. It is often insurance companies who effectively impose rules by refusing to insure certain activities that could result in litigation. Criminal Health and Safety laws are all subject to the test of what is reasonably practicable in a given situation. Therefore when properly applied by enforcement officers, health and safety requirements should be reasonable and proportionate to the risk. Many of the so called health and safety “rules” that have become common place as a result of the claims industry do not reflect what is actually required by law.

3.1.2 The service uses a variety of interventions to secure compliance with Health and Safety law. The most common interventions are targeted inspections, accident investigations and advisory visits. Each year the health and safety service carries out approximately 270 interventions. Some higher risk businesses will receive more than one intervention.

### **3.2 Statutory service standard**

Section 18 of the Health and Safety at Work etc Act places a duty on local authorities to provide “adequate arrangements for enforcement”. The section 18 standard launched in 2008 sets out the arrangements local authorities and the HSE must put in place in order to fulfil this obligation. The Authority must be compliant with this standard by March 2011.

The standard contains the following key requirements for local authorities;

- set out their commitment, priorities and planned interventions.
- put into place the capacity, management infrastructure, performance management and information systems required to deliver an effective service and to comply with their statutory duties.
- operate systems to train, appoint, authorise, monitor, and maintain a competent inspectorate.
- use interventions, including enforcement action, in accordance with their enforcement policy and within the principles of proportionality, accountability, consistency, transparency and targeting.
- work within their own organisation, in partnership with other Enforcement Authorities and with other regulators and stakeholders to make best use of joint resources and to maximize their impact on local, regional and national priorities.
- actively contribute to liaison, policy and governance arrangements at a local, regional and national level.
- promote sensible risk management

During 2010-2011 the service will be reviewed against the standard. Policies and Procedures will be reviewed and drafted to ensure the service is compliant with the standard. The purpose of the attached plan is to set out how the authority will deliver its health and safety service in a manner that satisfies the requirements of the standard.

A key requirement of the standard is that senior managers and political / policy decision makers are committed to providing adequate protection for all members of the public who may be affected by inadequate management of risk by local businesses. The purpose of this report is to provide the Board with an opportunity to comment on this matter before the Plan is considered by the Councils Executive.

### **3.3 Priority planning of inspections**

The Authority is responsible for health and safety enforcement in 1600+ premises. With finite resources we have to ensure inspections are targeted at those premises that create the highest risk. The health and safety service team therefore follow statutory priority planning guidance issued by the Health and Safety Executive. Following a routine inspection a premises will be risk rated by the enforcement officer. This rating will determine the frequency of future inspections. High risk premises are inspected every year.

In April 2010 there were fundamental changes to the priority planning guidance. Full details are contained in the attached service plan. Under the previous scheme, consideration was given to both the inherent risk of certain business types and the standard of compliance. However, under the new scheme the risk rating is based entirely on compliance. There are 4 components to this scheme; Health, Safety, Welfare and Management. The risk score is based on the highest score achieved for each of the 4 elements. Therefore a business now only needs to fail in one area to be considered High risk. It is anticipated that when the new scheme is applied it will significantly increase the number of high risk premises the authority will need to inspect.

It is not possible to predict at this stage the precise change in the risk profile of premises in the borough. Under the old scheme the authority had 42 high risk premises. However, the service team have already identified that many catering premises that were previously considered medium risk are now frequently being rated as high risk due to poor standards of gas and electrical safety.

### **3.4 Focus on local health concerns**

The medium term strategic aim of the authority's health and safety team is to ensure its resources are focussed on some of the boroughs key health concerns e.g. early deaths from cancer and respiratory ill health. Although lifestyle factors such as smoking and diet will have a considerable impact on these illnesses, conditions in the workplace will also make a significant

contribution. However, responsibility for many of the businesses that pose the greatest risk of exposure to chemicals and pollutants would normally fall to the Health and Safety Executive. It is unlikely the Health and Safety Executive will be in a position to intervene in all these businesses. This is due to limited resources and the fact the structure of the HSE means priorities are set at a national and regional level. The service team have identified an opportunity to influence health conditions in these workplaces by working in collaboration with the Health and Safety Executive at a local level. This will involve the Council assuming enforcement responsibility for certain premises that would normally be the responsibility of the HSE. This can be achieved by a statutory transfer of the premises under the Health and Safety (Enforcing Authority) Regulations or by an informal transfer using flexible warrants to enable the team to act in these premises.

The Council have approached the HSE with a proposal for all motor vehicle repair and body shops to be transferred to the local authority. Following initial joint inspections where local authority officers will shadow HSE inspectors, the Council will eventually assume responsibility for carrying out these inspections.

The rationale for selecting these premises is as follows;

- The premises are small businesses without access to in house expertise
- Being a small businesses they are unlikely to be inspected by a HSE officer
- The premises will be using chemicals such as spray paints that can give rise to occupational diseases such as respiratory ill health and cancers.
- There is a perception that within this sector controls are likely to be poor
- The Council is already responsible for some lower risk motor vehicle repair businesses such as tyre and exhaust premises. Officers therefore already have some expertise in this field

### **3.5 Advice and Guidance**

The Council is committed to providing businesses, particularly small and medium sized enterprises with comprehensive advice and guidance to help them comply with their legal obligations. Whilst formal enforcement action will be considered for serious or persistent offences, the team aim to secure compliance through advice and education.

### **3.6 Complaints**

The authority will respond to all complaints regarding health and safety standards in workplaces. Complaints provide useful intelligence and enable resources to be focussed on areas of highest risk. As discussed above

resources do not permit the authority to inspect all premises in the area. Therefore complaints highlight premises where standards may have deteriorated or the nature of risk changed.

### **3.7 Accident investigation and work related deaths**

All employers are required by law to report certain injuries, diseases and dangerous occurrences that occur at work. It is acknowledged that some incidents will be genuinely unlucky or unfortunate events that the employer took all reasonable precautions to prevent. However, where an accident is due to a failure by the employer to implement the necessary safeguards, officers will issue advice or in serious cases consider enforcement action to prevent a recurrence.

Although rare, particularly in the local authority enforced sector, the health and safety team are responsible for investigating work related deaths. There have been two fatal incidents in Halton in the last 7 years. These both involved warehouse and distribution activities. There is a national protocol on work related deaths which require the local authority to liaise with the police to determine the most appropriate authority to investigate. In most cases this will be a dual investigation until such time as the police are satisfied that the case is not one of manslaughter. The local authority will then take control of the investigation. The authority has a dual responsibility to investigate criminal offences under the health and safety at work act and to provide a report to the coroner and evidence at the subsequent inquest.

### **3.8 Enforcement of the Smoke Free provisions of the Health Act 2006**

The Council is responsible for enforcing the smoke free provisions of the Health Act 2006. These provisions prohibit smoking in public places. Originally the authority received funding from the department of health for this work which allowed for the employment of two dedicated smoke free enforcement officers. However, this funding is no longer available and the contracts for the dedicated posts have now ended. Smoke free enforcement has now been assimilated into other inspection work.

The enforcement of the smoke free provisions complements the initiatives of the PCT and Department of Health to discourage smoking and protect people from the health risks caused by passive smoking. The Council has a track record of supporting the PCT to discourage the take up of smoking by young people. This involves initiatives to de-normalise smoking by discouraging parents from smoking at home, in cars or around parks and playgrounds. These initiatives will also protect children from respiratory ill health caused by passive smoking. The Council also help refer the public to the PCT's smoking cessation services. These initiatives have seen some success in recent years with a significant increase in the number people quitting smoking. Last year over 1000 people per 100,000 of the population reported having quit smoking for over 4 weeks after attending smoking cessation sessions. This rate is in the top 20% of authorities nationwide.

### **3.9 Special projects 2010 – 2011**

#### **3.9.1 Tattooing and Body piercing**

The Council is responsible for enforcing the by-laws relating to Tattooing and Body piercing and the Tattooing of minors act 1969. The by-laws require all businesses engaged in the practice of Tattooing and body piercing to be licensed by the authority and comply with hygiene standards. The purpose of these standards is to prevent the spread of bloodborne infections in particular Hepatitis and HIV.

There has been a considerable increase in the interest in tattooing and body art in recent years particularly amongst young people. In response to this demand the number of licensed Tattoo parlours has increased. Officers are also currently investigating the activities of unlicensed home tattooists. Last year equipment was seized from one individual. A further individual is under investigation following a number of complaints from the public. There is a considerable health risk associated with unlicensed tattooing as no inspection has been undertaken to ensure that the premises complies with hygiene standards.

The Authority is also responsible for enforcing the Tattooing of Minors act. The team are currently investigating two complaints from parents involving the tattooing of under age girls.

In addition to enforcement activity the team are to launch a health promotion campaign. This will have the following key objectives;

- Encourage young people to wait until they are 18 before considering a Tattoo
- Warn the public of the health risks associated with unlicensed operators
- Encourage the public to report illegal activity

#### **3.9.2 Inspection of children's day nurseries.**

During 2010-2011 the team intend to inspect all 100 of the boroughs children's day nurseries. Although other agencies such as Ofsted and the authority's Children and Young People Directorate oversee the welfare of children in these nurseries, these inspections will focus on the physical safety of the environment. The rationale for this project is;

- There has been a considerable increase in day nursery facilities in recent years and many of these premises have not previously been risk rated for health and safety
- Children are a vulnerable group
- There is an expectation amongst parents that these premises will have been inspected and are safe.

Officers have been working closely with the authority's Early Years team. Workshops have been held for nursery owners to advise them of the basic health and safety requirements. To increase efficiency the team are going to pilot the use of auto text reports. However, where necessary reports will be tailored to individual circumstances.

### **3.9.3 Preparation for the Sunbeds (Regulation) Act 2010**

The Sunbeds (Regulation) Act 2010 places a duty on sunbed operators to prevent the use of the Sunbeds by Children (persons under 18). This act comes into force on the 8<sup>th</sup> April 2011. The Act also provides powers for regulations to be made setting out further duties relating to the sale and hire of equipment, provision of information and protective eyewear. Whilst Halton's levels of skin cancer are in keeping with the national and regional average, the national picture is one of rising incidents of skin cancer. Rates of melanoma have increased since the 1970's at a rate more than any other cancer. Melanoma is also the most frequently diagnosed cancer in young people aged 15-34. The main cause of skin cancer is excessive exposure to UV light either from the sun or from UV tanning equipment.

During 2010-2011 the team will identify all premises with tanning equipment. All operators will receive written information advising them of the key provisions of the act. This will be backed up with a health promotion campaign to advise the public of the new law and also the risk of excessive exposure to UV radiation.

### **3.10 Formal Enforcement Action**

In accordance with established enforcement policy the team officers always endeavour to use informal means such as advice and education to secure compliance. However, where there are serious breaches of Health and Safety law or incidences of persistent non compliance the team will use a range of enforcement powers.

In 2009-2010 the team instigated the following actions;

Written Warnings	93
Improvement Notice	9
Prohibition Notice	5
Simple Caution	0
Prosecution	1

In addition since the 1<sup>st</sup> April 2010 the authority has prosecuted two further businesses for Health and Safety offences. In the first case a furniture warehouse was fined a total of £5,165 for failing to comply with an improvement notice to secure unsafe racking. In the second case a chain of Greeting Cards shops was fined a total of £17,515 for health and safety offences at both the Widnes and Runcorn branch. This followed an injury to

an employ and the service of two improvement notices. The company had previously been convicted for similar offences in other local authority areas.

Two further prosecutions pending. This does represent an increase in enforcement activity over recent years. Whilst it is not possible to draw any firm conclusions from this increase it may be that businesses are finding it difficult to trade both profitably and compliantly in the current economic climate.

#### **4.0 POLICY IMPLICATIONS**

4.1 The service is a statutory function, which the authority is required to provide. Guidance issued under section 18 of the Health and Safety at Work Act sets out a statutory standard which the authority must comply with by April 2011.

4.2 The revised health and safety risk rating scheme is likely to increase the number of premises that require an annual health and safety inspection. Therefore the service will need to be flexible in the way it employs its professional resource to ensure resources are deployed to the areas of highest risk.

4.3 It is intended to work in partnership with the HSE to ensure that those businesses that have the most potential to influence local health concerns are subject to inspection. However this will mean the statutory transfer of premises from the HSE to the Authority. Whilst this will mean the Authority assuming responsibility for additional premises it will provide the Authority with an opportunity to intervene in those premises that have greater potential to influence the boroughs health concerns. The Boards comments on this proposal would be welcome.

### **5 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

#### **5.1 Children and Young People in Halton**

The health and safety of children in the borough is protected through the enforcement of the taboing of minors act, the requirements of the Sunbed (Regulations) Act 2010 and the day nurseries inspection project.

#### **5.2 Employment, Learning and Skills in Halton**

The Service is committed to providing comprehensive advice and guidance to businesses to help them comply with their legal obligations.

#### **5.3 A Healthy Halton**

There is a considerable overlap between the contribution this service makes to both the Healthy and Safer Halton priorities. However, the collaborative working with the HSE to target high risk premises will impact on the boroughs



public health concerns including cancer and respiratory ill health. Public Health is also protected through the enforcement of the bylaws relating to tattooing and the new Sunbed Act.

The ongoing work to enforce the smokefree provisions of the Health Act complement the work of the local PCT by discouraging smoking and reducing the health effects of passive smoking.

#### **5.4 A Safer Halton**

The activities undertaken safeguards the public by ensuring workplaces comply with the requirements of Health and Safety law.

#### **5.5 Halton's Urban Renewal**

Advice to ensure that new developments considered protect health and safety during the buildings future use is provided.

### **6.0 RISK ANALYSIS**

There is not considered to be any significant risk associated with the proposals in this report. However, it should be noted that the service is a statutory service that the authority is under an obligation to provide. This report has identified opportunities to address some of potential occupational factors influencing the boroughs health concerns through working in partnership with the HSE.

### **7.0 EQUALITY AND DIVERSITY ISSUES**

7.1 The enforcement of Health and Safety legislation is not intended to have either a positive or negative impact upon equality and diversity The service invites and seeks feedback on its regulatory activities and would respond to any suggestion of differential impact. The regulatory service aims to be consistent and even handed in all regards and as such the service is not applied differently to any particular group. The enforcement policies have if applied correctly and monitored should not have nor are intended to have any differential effects.

7.2 Many proprietors of food businesses in the borough do not speak English as a first language. Where necessary the service employs interpreters and makes publications available in alternative languages to ensure the service communicates effectively with all ethnic groups.

### **8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

There are no relevant papers within the meaning of the act.