

Hi Chris

Thank you for your email of yesterday.

I would welcome a discussion with you regarding this case and would be grateful if you could give me a ring on the number detailed below at your convenience.

Regards

Jane

Jane Cloherty
FOI Policy Advisor
1 G
Redgrave Court
Bootle

Tel: 0151 951 3274
Fax 0151 951 3274

From: casework@ico.gsi.gov.uk [mailto:casework@ico.gsi.gov.uk]
Sent: 10 October 2012 11:36
To: Jane Cloherty
Subject: RE: Complaint to the ICO from Mr Dransfield[Ref. FS50433994]

PROTECT

10 October 2012

Case Reference: FS50433994
HSE Appeal Reference Number: 20120500355

Dear Ms Cloherty

I am writing in regard to a complaint made to the Information Commissioner by a Mr Dransfield. This complaint is in relation to a request he made on 6 February 2012 for "*copies of the HSE Investigation undertaken at any of the 6 PFI schools in Exeter.*" The HSE initially refused this request as vexatious.

You have previously corresponded with Mr Craig Withers at the ICO about this case. However Mr Withers no longer works as the ICO and as I was his team manager, I am now emailing you about this case.

I understand that the HSE carried out an internal review in May in relation to Mr Dransfield's request, and (from reading the 'whatdotheyknow' website, it appears that you provided a document (redacted under section 40) that you said was the only information you hold that falls under this request.

Mr Dransfield has contacted the ICO again, and has asked for this case to be

continued (Mr Wither's originally closed it down because – at the time – no internal review had been carried out). Therefore I am writing to let you know that this complaint will now be looked at by the ICO.

However, due to the length of time since the original case was closed, I have arranged for a new case to be set up, which will have a new reference number. You should receive a standard email about this from us, letting you know that the case has been set up and showing the new reference number. The case will then be placed into my team's queue for allocation to a case officer, who will then process the case accordingly.

If you have any questions please do not hesitate to contact me on 01625 545 671.

Yours sincerely

Christopher Hogan
Team Manager – Complaints Resolution (Group 3)

.....
Please note: Incoming and outgoing email messages are routinely monitored for compliance with our policy on the use of electronic communications and may be automatically logged, monitored and / or recorded for lawful purposes by the GSI service provider

Interested in Occupational Health and Safety information?
Please visit the HSE website at the following address to keep yourself up to date

www.hse.gov.uk

.....

From: Jane Cloherty/ahse.gsi.gov.uk [mailto:Jane.Cloherty@hse.gsi.gov.uk]
Sent: 03 January 2013 15:34
To: casework
Subject: ICO Case Reference FS50468181 - Mr A Dransfield

TAO: Nicola Frumprides

Nicola

Please find attached HSE's response to the above case. I have sent a hard copy of this response together with attachments via the external post.

Regards

Jane

Jane Cloherty
FOI Policy Advisor
1 G
Redgrave Court
Bootle

Tel: 0151 951 [REDACTED]
Fax 0151 951 3274

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www.hse.gov.uk

Ms Nicola Humphries
Lead Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

3rd January 2013

Dear Ms Humphries

ICO Case Reference Number: FS50468181
HSE Case Reference Number: 2012120352
Complainant: Mr A Dransfield

Thank you for your email/letter dated 8th November advising that you had accepted the above case for investigation. This is the Health and Safety Executive's (HSE) formal submission in response to the issues raised by you. Please accept my apologies for the delayed reply.

Background Information relating to this request

I confirm the following:

6/4/2012 – HSE received the following FOI request from Mr Dransfield:

Please provide me with copies of the HSE Investigation undertaken at any of the 6 PFI schools in Exeter.

6/4/2012 – HSE responded to Mr Dransfield, refusing the request as we considered the request vexatious under section 14 of the FOIA.

12/4/2012 – The ICO contacted HSE asking if we would consider undertaking an internal review of the above decision. HSE agreed and conducted an internal review, overturning the original decision and disclosing a briefing note to Mr Dransfield on the 21st May 2012. HSE had previously disclosed this briefing note to Mr Dransfield in response to a subject access request.

Scope of Case

Mr Dransfield has been informed by the ICO that the focus of their investigation will be to establish if HSE holds further information that could be provided in response to his request. As part of this investigation, the ICO

have asked HSE to answer the following questions.

1. Please clarify why safety concerns raised about PFI schools in Exeter are outside the enforcement remit of HSE and would not be investigated by it.

HSE and Local Authorities (LAs) are responsible for enforcing health and safety legislation in Great Britain. Together, they enforce health and safety legislation at individual work premises according to the main activity carried out there.

Mr Dransfield's first complaint related to a footbridge at a PFI school in Exeter. His complaint raised concerns about the quality of concrete used during the bridge construction and stated the bridge did not meet electrical safety standard (BS6651:1999).

The areas of concern raised by Mr Dransfield do not fall within HSE's enforcement remit because they relate to building requirements as defined in the Building Regulations. The Building Act 1984 is the primary legislation under which the Building Regulations and other secondary legislation are made and the Local Authority via Building Control rather than HSE enforces non-compliance with this legislation.

HSE would only investigate a complaint associated with a new build if the complaint identified a risk to the health and safety of the workforce or the public.

2. If possible, please provide the Commissioner with a copy of any relevant policy statement that confirms the remit of HSE.

As an independent regulator, HSE's work covers a variety of activities from shaping and reviewing regulations, producing research and statistics and enforcing the law to reduce work-related death and serious injury. As such, we do not have one policy statement confirming our remit although details of all of the work we undertake can be found via the following link of our website -

<http://www.hse.gov.uk/aboutus/aboutus.htm>

HSE owns a significant amount of primary and secondary health and safety legislation and one of our primary functions is to enforce this legislation by taking action against those who put workers at risk of death, illness or injury. I have provided a link to HSE's Enforcement Policy Statement as this details the procedures HSE follows when carrying out its enforcement role -

<http://www.hse.gov.uk/enforcement/policy.htm>

HSE and over 380 individual Local Authorities (LAs) are responsible for the enforcement of health and safety in Great Britain, under the general direction of the Health and Safety Executive Board. See the attached

link for further information -

http://www.hse.gov.uk/foi/internalops/ocs/100-199/124_11/index.htm

The Health and Safety (Enforcing Authority) Regulations 1998 (EA Regulations) allocate the enforcement of health and safety legislation between HSE and LA's as detailed via the attached link - http://www.hse.gov.uk/foi/internalops/ocs/100-199/124_11/index.htm.

3. Please explain why HSE decided to conduct an informal investigation into the matter if the issues raised are outside of its remit.

Mr Dransfield's second complaint raised concerns about Scaffolding at a construction site in Exeter

Enforcement of health and safety issues involving scaffold can fall within the enforcing remit of both HSE and the local authority (LA), depending on the nature of the concern. Due to the limited information provided by Mr Dransfield at the time of his complaint, HSE were unable to establish if the complaint fell within the enforcing remit of HSE or the LA and decided the only way to establish this fact would be to visit the site.

Once on site, HSE were able to establish that the scaffold did not pose a risk to the health and safety of the workforce or pose a threat to public safety therefore the complaint did not fall with HSE's enforcing remit as there was no breach of health and safety law. HSE would have referred Mr Dransfield's complaint to the relevant enforcing authority however during our visit, we could not establish any areas of concern associated with the scaffold and therefore considered Mr Dransfield's complaint to be unfounded.

The only information HSE hold relating to this complaint is the COIN Summary, held within HSE's corporate operational information system, a copy of which has already been disclosed to Mr Dransfield and the ICO.

I confirm HSE are happy for the ICO to disclose this letter to Mr Dransfield.

HSE wish to add the following information:

The public have a perception that every health and safety concern falls within the remit of the Health and Safety Executive and this is not the case.

Not all complaints received by HSE will fall within our enforcement remit but it can sometimes be difficult to establish this without further investigation.

HSE investigated Mr Dransfield's complaints over 6.5 years ago and since then we have spent considerable time and effort explaining to Mr Dransfield why his complaints did not fall within HSE's enforcing remit. Mr Dransfield's unwillingness to accept our explanations and his relentless refusal to accept the fact that HSE is not the correct enforcing authority is causing a significant drain on resource within this organisation and HSE cannot continue to respond to Mr Dransfield regarding this matter. It therefore remains our intention to apply Section 14(1) to future FOI requests received from him, if they relate to the same or similar information.

Should you wish to discuss this matter further please do not hesitate to contact me.

Yours sincerely



Jane Cloherty

FOI Policy Advisor
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Bootle
Merseyside
L20 7HS

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Email: jane.cloherty@hse.gsi.gov.uk

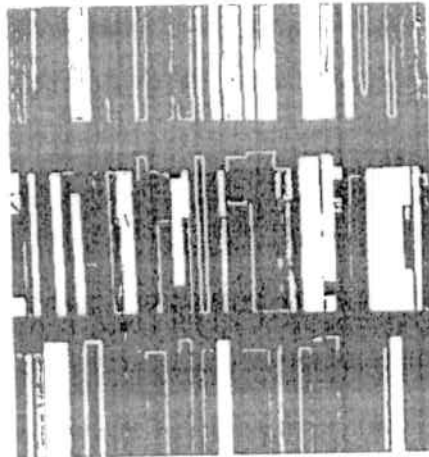


Health and Safety
Executive

HSE's work

The HSE's work covers a varied range of activities; from shaping and reviewing regulations, producing research and statistics and enforcing the law.

- Legislation



Real people video



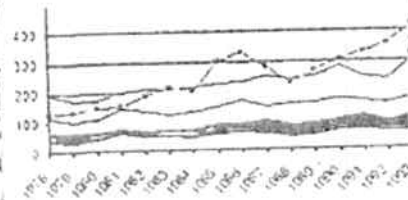
The HSE are concerned about those work issues that cause people's

Enforcement



- What is enforcement?
- How HSE enforces health

Statistics



- Overall picture
- Industry statistics

Science and research



Science and research is key in the development and discharge of HSE's strategic plans.

Hazardous installations

High hazard industries and sectors:

- Chemical Manufacture & Storage

Nuclear safety & security

HSE regulates the nuclear industry through its Nuclear Directorate (ND). The Directorate's primary goal is to ensure that those it regulates

Field operations

Regional boundaries

- Manufacturing sector
- Public services sector

- Gas Storage & Transportation

[21]

have no major nuclear accidents.

- Who we are

[29]

- Offshore Oil & Gas

- Agriculture

sector

[36]

Link URLs in this

- Food and drink manufacture sector

[37]

- Construction sector

[38]

- Services Transportation Safety Unit (STSU)

[39]

page

1. Legislation

<http://www.hse.gov.uk/legislation/index.htm>

2. Better regulation

<http://www.hse.gov.uk/regulation/index.htm>

3. View the real people video

<http://www.hse.gov.uk/aboutus/realpeople.htm>

4. What is enforcement?

<http://www.hse.gov.uk/enforce/index.htm>

5. How HSE enforces health & safety

<http://www.hse.gov.uk/enforce/enforce.htm>

6. How HSE works with the law

<http://www.hse.gov.uk/enforce/how.htm>

7. Examples of enforcement

<http://www.hse.gov.uk/enforce/examples.htm>

8. Enforcement guide

<http://www.hse.gov.uk/enforce/enforcementguide/index.htm>

9. More Enforcement

<http://www.hse.gov.uk/enforce/index.htm>

10. Overall picture

<http://www.hse.gov.uk/statistics/index.htm>

11. Industry statistics

<http://www.hse.gov.uk/statistics/industry/index.htm>

12. Fatal injuries

<http://www.hse.gov.uk/statistics/fatals.htm>

13. Injury/health analysis

<http://www.hse.gov.uk/statistics/causinj/index.htm>

14. Publications/Releases

<http://www.hse.gov.uk/statistics/books.htm>

15. More about HSE's statistics

<http://www.hse.gov.uk/statistics/index.htm>

16. Science and research policy
<http://www.hse.gov.uk/research/policy.htm>
17. Research reports
<http://www.hse.gov.uk/research/rrhtm/index.htm>
18. What's new
<http://www.hse.gov.uk/research/news.htm>
19. More Science and research
<http://www.hse.gov.uk/research/index.htm>
20. Chemical Manufacture & Storage
<http://www.hse.gov.uk/chemicals/index.htm>
21. Gas Storage & Transportation
<http://www.hse.gov.uk/gas/supply/index.htm>
22. Offshore Oil & Gas Extraction
<http://www.hse.gov.uk/offshore/index.htm>
23. Pipelines
<http://www.hse.gov.uk/pipelines/index.htm>
24. Mining
<http://www.hse.gov.uk/mining/index.htm>
25. Diving
<http://www.hse.gov.uk/diving/index.htm>
26. Explosives
<http://www.hse.gov.uk/explosives/index.htm>
27. Biological Agents
<http://www.hse.gov.uk/biosafety/index.htm>
28. Visit Hazardous installations
<http://www.hse.gov.uk/hid/index.htm>
29. Who we are
<http://www.hse.gov.uk/nuclear/about.htm>
30. Safety assessment principles
<http://www.hse.gov.uk/nuclear/saps/index.htm>
31. New nuclear power stations
<http://www.hse.gov.uk/newreactors/index.htm>
32. Office for Civil Nuclear Security (OCNS)
<http://www.hse.gov.uk/nuclear/ocns/index.htm>

33. More about Nuclear Directorate
<http://www.hse.gov.uk/nuclear/index.htm>
34. Manufacturing sector
<http://www.hse.gov.uk/manufacturing/index.htm>
35. Public services sector
<http://www.hse.gov.uk/services/index.htm>
36. Agriculture sector
<http://www.hse.gov.uk/agriculture/index.htm>
37. Food and drink manufacture sector
<http://www.hse.gov.uk/food/index.htm>
38. Construction sector
<http://www.hse.gov.uk/construction/index.htm>
39. Services Transportation Safety Unit (STSU)
<http://www.hse.gov.uk/fod/stsu/index.htm>
40. More about field operations
<http://www.hse.gov.uk/fod/index.htm>



How HSE enforces health and safety

The HSE Enforcement Policy Statement adopts a wide definition of "enforcement":

- Enforcing authorities may offer duty holders information and advice, both face to face and in writing. They may warn a duty holder that in their opinion, they are failing to comply with the law.
- Where appropriate, they may also serve improvement and prohibition notices, withdraw approvals, vary licence conditions or exemptions, issue formal cautions (England and Wales only), and they may prosecute (or report to the Procurator Fiscal with a view to prosecution in Scotland).

In carrying out its enforcement role, HSE follows these internal operational procedures:

- Inspection
- Investigation
- Complaints
- Enforcement decisions
- Notice
- Prosecution
- Major incident
- Penalties
- Work-related deaths

Inspection

HSE warranted inspectors:

- assess relevant documents held by the duty holder
- interview people
- observe site conditions, standards and practices where work activities are carried out under the duty holder's control.

Find out more about [inspection](#)

[1]

Investigation

Investigation includes all those activities carried out in response to an incident or a complaint to:

- gather and establish the facts
- identify immediate and underlying causes and the lessons to be learned
- prevent recurrence
- detect breaches of legislation for which HSE is the enforcing authority
- take appropriate action, including formal enforcement.

An investigation may range from an enquiry by a single inspector about a minor incident or complaint to a large enquiry involving a team of inspectors.

Find out more about [investigation](#)

[2]

Complaints

A complaint is a concern, originating from outside HSE, about a work activity for which HSE is the enforcing authority. We respond where we can identify the duty holder and/or the location and where:

- there been significant harm, or there is the potential for significant harm; or
- the complaint alleges the denial of basic employee welfare facilities; or
- the complaint appears to constitute a significant breach of law for which HSE is the enforcing authority.

Find out more about how HSE deals with [complaints](#)

[3]

Enforcement decisions

Enforcement may include:

- serving notices on duty holders
- withdrawing approvals
- varying licences, conditions or exemptions
- issuing simple cautions
- prosecution
- providing information or advice, face-to-face or in writing.

Find out more about [enforcement decisions](#)

[4]

Notice

An inspector may serve one of three types of notice:

- A prohibition notice tells the duty holder to stop an activity immediately.
- An improvement notice specifies remedial action and gives the duty holder a date by which they must complete the action.
- A Crown notice is issued under the same circumstances that would justify a statutory prohibition or improvement notice, but is only served on duty holders in Crown organisations such as government departments, the Forestry Commission or the Prison Service.

Find out more about [serving notices](#)

[5]

Prosecution

Prosecution is punitive action taken against a duty holder following a decision making process that is impartial, justified and procedurally correct.

An Approval Officer has the authority to approve a prosecution, and the necessary legal competencies to assess a prosecution report in a way that is thorough, fair, independent and objective.

A Litigation Officer has received appropriate training to administer the prosecution, guided by either an inspector or a solicitor.

Find out more about [prosecution](#)

[6]

Major incident

A major incident is a significant event that demands a response beyond the routine. The event may cause, or have the potential to cause, either:

- multiple serious injuries, cases of ill health (either immediate or delayed), or loss of life; or
- serious disruption or extensive damage to property

'Significance' depends on:

- the severity of the incident
- the degree of public concern
- the nature and extent of HSE's previous involvement with the duty holder(s).


Find out more about [major incident](#)

[7]

Penalties

Following a successful prosecution, the courts will decide what penalty to impose. HSE believes that the current general level of fines does not properly reflect the seriousness of health and safety offences. However, it is up to the courts to decide appropriate fines. In England and Wales (though not in Scotland), the courts may also order the defendant to pay the prosecution costs.

As well as imposing fines, the courts can imprison offenders. Five people have been sent to prison for health and safety offences since January 1996. Of course, if convicted of manslaughter or culpable homicide, offenders are likely to receive a prison sentence.

More detail on the maximum penalties for health and safety offences can be found at the back of the HSE [Enforcement policy statement](#) 

[8]

We also believe that many of the maximum penalties available for health and safety offences are too low – as the courts have themselves said on occasion. The Government supports our view and is committed to increasing many of the maximum fines available to the lower courts as well as making imprisonment more widely available for both lower and higher courts.

Work-related deaths

Under the terms of the [Work Related Deaths protocols](#)

[9]

following a work related death the police will take the lead in a joint investigation with HSE or other relevant enforcing authority to see whether there is sufficient evidence to suggest that a serious criminal offence (other than a health and safety offence), such as gross negligence manslaughter (in Scotland, culpable homicide) or corporate manslaughter (in Scotland, corporate homicide) may have caused the death. If there is insufficient evidence that such a serious criminal offence (other than a health and safety offence) caused the death, then HSE or the relevant enforcing authority will take over and investigate under health and safety law.

Link URLs in this page

1. inspection

<http://www.hse.gov.uk/foi/internalops/og/ogprocedures/inspection/index.htm>

2. investigation

<http://www.hse.gov.uk/foi/internalops/og/ogprocedures/investigation/index.htm>

3. complaints

<http://www.hse.gov.uk/foi/internalops/og/ogprocedures/complaints/index.htm>

4. enforcement decisions

<http://www.hse.gov.uk/foi/internalops/og/ogprocedures/enforcement/index.htm>

5. serving notices

<http://www.hse.gov.uk/foi/internalops/og/ogprocedures/notices/index.htm>

6. prosecution

<http://www.hse.gov.uk/foi/internalops/og/ogprocedures/prosecutions/index.htm>

7. major incident

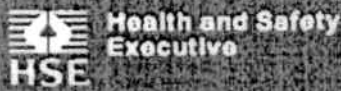
<http://www.hse.gov.uk/foi/internalops/og/ogprocedures/majorincident/index.htm>

8. Enforcement policy statement

<http://www.hse.gov.uk/pubns/hse41.pdf>

9. Work Related Deaths protocols

<http://www.hse.gov.uk/enforce/wrdp/index.htm>



Local authority enforcement

HSE and over 380 individual local authorities (LAs) are responsible for the enforcement of health and safety in Great Britain, under the general direction of the Health and Safety Executive Board.

The Health and Safety at Work etc. Act 1974, and related legislation, is enforced at individual work premises by HSE or the relevant LA according to the main activity carried out there. LAs also enforce other primary legislation relating to pesticides (Food and Environment Protection Act 1985) on a similar basis, as well as storage of explosives and petroleum licensing. The latter aspects are also enforced by Fire Authorities and Trading Standards departments.

The Health and Safety (Enforcing Authority) Regulations 1998 (EA Regulations) allocate the enforcement of health and safety legislation at different premises between LAs and HSE. Some businesses, such as dry cleaning and motor vehicle repair, are enforced either by HSE or LAs depending on the main activity at a particular premise. Responsibility for enforcement at certain premises may be transferred between HSE and LA's by agreement.

LAs are the principle enforcing authority in retailing, wholesale distribution, warehousing, hotel and catering premises, offices, and the consumer/leisure industries. However, HSE may also have some enforcement responsibilities at certain premises. HSE has provided guidance that provides an [A-Z list of enforcement allocation](#)

[1]

- Section 18

[2]

Link URLs in this page

1. A-Z list of enforcement allocation
http://www.hse.gov.uk/foi/internalops/ocs/100-199/124_11/index.htm
2. Section 18
<http://www.hse.gov.uk/lau/section18.htm>



Health and safety (enforcing authority) regulations 1998: A-Z guide to allocation

OC 124/11 - Rev 3

Review Date

01/02/2016

Open Government Status

Fully Open

Version No & Date

3: 17/11/2011

Author Unit/Section

HSE Local authority unit

Target Audience:

HSE and LA health and safety enforcement officers

This OC contains guidance derived from questions raised on enforcement allocation and other matters. The contents should assist Enforcement Officers and others in resolving questions which may arise, although the interpretation given is subject to judicial decision in any particular case.

Introduction

1 Over the years, a mass of further information has accumulated informally and has been used in answering enquiries. This OC consolidates all this information in one location, in the form of a simple alphabetical guide given at the Appendix

(1) provide a quick reference tool. It cannot deal with every situation, but will be reviewed and updated regularly as guidance on new situations accumulates.

2 It is anticipated that the guide will be helpful to enforcement liaison officers (ELOs) and also to other staff who have to decide on a regular basis to which enforcing authority a

phone call, complaint or accident should be directed. The guide will also be issued to local authorities (LAs) as a local authority circular (LAC).

3 This OC also summarises the essentials of the HS(EA) Regulations and lists other guidance. Any questions should be directed to ELOs.

Prime considerations

4 Regulation 4(1) makes HSE responsible for enforcement against a county council, any other local authority as defined in reg.2, a parish council in England or a community council in Wales or Scotland, a police authority, a fire authority, the Ministry of Defence or a visiting force, the United Kingdom Atomic Energy Authority and the Crown (but not any part of premises occupied by HSE or any activity carried on there).

5 While HSE is the enforcing authority for any part of the premises occupied by the county council etc, it is not necessarily the enforcing authority if the county council etc do not themselves occupy the premises. The enforcing authority in such cases would be determined by the main activity carried on within those premises, the LA being the enforcing authority where the main activity is specified in schedule 1 (with HSE responsible, in such cases, for the enforcement of any schedule 2 activities that may occur from time to time).

6 The LA enforce for those main activities listed in the Regulations schedule 1 which are not carried out by any of the organisations listed in para 4 above.

7 Activities listed in the Regulations schedule 2 are for HSE to enforce in premises, even if the LA otherwise has responsibility for enforcement in premises because the main activity carried out there is listed in schedule 1.

8 Regulation 5 provides arrangements enabling responsibility for enforcement to be transferred by agreement between HSE and the LA, or by the Executive.

9 HSW Act s 6 and the Supply of Machinery (Safety) Regulations 1992 (as amended), fall to HSE for all work activities.

10 The Electrical Equipment (Safety) Regulations 1994 (and certain other regulations made under the Article 100A Directive) make HSE responsible for enforcement in connection with electrical equipment designed for use or operation by persons at work, and for such equipment in use in non-domestic premises. The trading standards officer has enforcement responsibilities for consumer products.

11 The common parts of **domestic** premises fall to HSE, as does any work activity carried out at domestic premises where there is no independent means of access other than from the domestic areas of the property.

12 Where activities being undertaken constitute 'operation of a railway' (or a tramway) the Office of Rail Regulation (ORR) is the enforcing authority under the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 – as amended 2008.

The demarcation between ORR, HSE and LA's is set out in a Memorandum of Understanding (MoU) between HSE and ORR with detailed demarcations set out in the appendix to the MoU. This document should be used as the primary guide to enforcement responsibility .

Date first issued. 6 December 1999
(220/FOD/1044/1999)

Other guidance on the Health and Safety (Enforcing Authority) Regulations 1998

OC 124/7

[2]

The health and safety (enforcing authority) regulations 1998.

OC 124/8

[3]

The Health and Safety (Enforcing Authority) Regulations 1998: reg.5 transfers and reg.6 assignments.

OC 124/9

[4]

The health and safety (enforcing authority) regulations 1998: Main activity concept

OC 124/10

[5]

The health and safety (enforcing authority) regulations 1998: Motor vehicle repair

Appendix

[6]

A-Z guide of enforcement allocation

Link URLs in this page

1. Appendix
http://www.hse.gov.uk/foi/internalops/ocs/100-199/124_11/124_11t.htm
2. OC 124/7
http://www.hse.gov.uk/foi/internalops/ocs/100-199/124_7.htm
3. OC 124/8
http://www.hse.gov.uk/foi/internalops/ocs/100-199/124_8.htm
4. OC 124/9
http://www.hse.gov.uk/foi/internalops/ocs/100-199/124_9.htm
5. OC 124/10
http://www.hse.gov.uk/foi/internalops/ocs/100-199/124_10.htm
6. Appendix
http://www.hse.gov.uk/foi/internalops/ocs/100-199/124_11/124_11t.htm



Ms Nicola Humphries
Lead Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

3rd January 2013

SCANNING
- 7 JAN 2013

Dear Ms Humphries

ICO Case Reference Number: FS50468181
HSE Case Reference Number: 2012120352
Complainant: Mr A Dransfield

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The areas of concern raised by Mr Dransfield do not fall within HSE's enforcement remit because they relate to building requirements as defined in the Building Regulations. The Building Act 1984 is the primary legislation under which the Building Regulations and other secondary legislation are made and the Local Authority via Building Control rather than HSE enforces non-compliance with this legislation.

HSE would only investigate a complaint associated with a new build if the complaint identified a risk to the health and safety of the workforce or the public.

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As an independent regulator, HSE's work covers a variety of activities from shaping and reviewing regulations, producing research and statistics and enforcing the law to reduce work-related death and serious injury. As such, we do not have one policy statement confirming our remit although details of all of the work we undertake can be found via the following link of our website - <http://www.hse.gov.uk/aboutus/hseswork.htm>.

HSE owns a significant amount of primary and secondary health and safety legislation and one of our primary functions is to enforce this legislation by taking action against those who put workers at risk of death, illness or injury. I have provided a link to HSE's Enforcement Policy Statement as this details the procedures HSE follows when carrying out its enforcement role - <http://www.hse.gov.uk/enforce/enforce.htm>.

HSE and over 380 individual Local Authorities (LAs) are responsible for the enforcement of health and safety in Great Britain, under the general direction of the Health and Safety Executive Board. See the attached

link for further information -
<http://www.hse.gov.uk/lau/enforcement.htm>.

*The Health and Safety (Enforcing Authority) Regulations 1998 (EA Regulations) allocate the enforcement of health and safety legislation between HSE and LA's as detailed via the attached link -
http://www.hse.gov.uk/foi/internalops/ocs/100-199/124_11/index.htm.*

- 3. Please explain why HSE decided to conduct an informal investigation into the matter if the issues raised are outside of its remit.**

Mr Dransfield's second complaint raised concerns about Scaffolding at a construction site in Exeter.

Enforcement of health and safety issues involving scaffold can fall within the enforcing remit of both HSE and the local authority (LA), depending on the nature of the concern. Due to the limited information provided by Mr Dransfield at the time of his complaint, HSE were unable to establish if the complaint fell within the enforcing remit of HSE or the LA and decided the only way to establish this fact would be to visit the site.

Once on site, HSE were able to establish that the scaffold did not pose a risk to the health and safety of the workforce or pose a threat to public safety therefore the complaint did not fall with HSE's enforcing remit as there was no breach of health and safety law. HSE would have referred Mr Dransfield's complaint to the relevant enforcing authority however during our visit, we could not establish any areas of concern associated with the scaffold and therefore considered Mr Dransfield's complaint to be unfounded.

The only information HSE hold relating to this complaint is the COIN Summary, held within HSE's corporate operational information system, a copy of which has already been disclosed to Mr Dransfield and the ICO.

I confirm HSE are happy for the ICO to disclose this letter to Mr Dransfield.

HSE wish to add the following information:

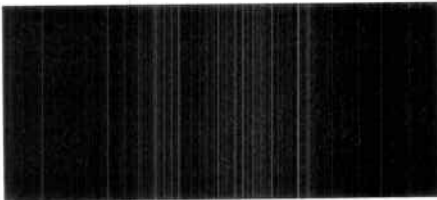
The public have a perception that every health and safety concern falls within the remit of the Health and Safety Executive and this is not the case.

Not all complaints received by HSE will fall within our enforcement remit but it can sometimes be difficult to establish this without further investigation.

HSE investigated Mr Dransfield's complaints over 6.5 years ago and since then we have spent considerable time and effort explaining to Mr Dransfield why his complaints did not fall within HSE's enforcing remit. Mr Dransfield's unwillingness to accept our explanations and his relentless refusal to accept the fact that HSE is not the correct enforcing authority is causing a significant drain on resource within this organisation and HSE cannot continue to respond to Mr Dransfield regarding this matter. It therefore remains our intention to apply Section 14(1) to future FOI requests received from him, if they relate to the same or similar information.

Should you wish to discuss this matter further please do not hesitate to contact me.

Yours sincerely



Jane Cloherty

FOI Policy Advisor
FOI Unit
1.G
Redgrave Court
Bootle
Merseyside
L20 7HS

Tel: 0151 951 [REDACTED]
Email: jane.cloherty@hse.gsi.gov.uk

Thanks Nicola

I acknowledge receipt of the email.

Jane

Jane Cloherty
FOI Policy Advisor
1.G
Redgrave Court
Bootle

VPN 523 [REDACTED]
Fax 0151 951 3274

From: casework@ico.gsi.gov.uk [mailto:casework@ico.gsi.gov.uk]
Sent: 17 January 2013 12:20
To: Jane Cloherty
Subject: Information Request 2012120352[Ref. FS50468181]

PROTECT

17th January 2013

Case Reference Number FS50468181
Your Reference: 2012120352

Dear Ms Cloherty

Thank you for your letter dated 3 January 2013 regarding the above case.

I have now written to Mr Dransfield and informed him that as a preliminary conclusion, the Commissioner is satisfied that the Health and Safety Executive (HSE) has provided him with all the information it holds with respect to his information request of 2 February 2012.

I have asked Mr Dransfield whether he accepts the above preliminary conclusion and is content that this case should be closed, or whether he requires a decision notice on this matter. I shall inform you as soon as he has informed me how he wishes to progress his complaint.

Thank you for your help.

I should be grateful for an acknowledgement of receipt of this email.

Regards
Nicola

Nicola Humphries
Lead Case Officer

Information Commissioner's Office
01625 545340

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Please visit the HSE website at the following address to keep yourself up to date

www.hse.gov.uk

Ms Nicola Humphries
Lead Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

3rd January 2013

Dear Ms Humphries

ICO Case Reference Number: FS50468181
HSE Case Reference Number: 2012120352
Complainant: Mr A Dransfield

Thank you for your email/letter dated 8th November advising that you had accepted the above case for investigation. This is the Health and Safety Executive's (HSE) formal submission in response to the issues raised by you. Please accept my apologies for the delayed reply.

Background Information relating to this request

I confirm the following:

6/4/2012 – HSE received the following FOI request from Mr Dransfield:

Please provide me with copies of the HSE Investigation undertaken at any of the 6 PFI schools in Exeter.

6/4/2012 – HSE responded to Mr Dransfield, refusing the request as we considered the request vexatious under section 14 of the FOIA.

12/4/2012 – The ICO contacted HSE asking if we would consider undertaking an internal review of the above decision. HSE agreed and conducted an internal review, overturning the original decision and disclosing a briefing note to Mr Dransfield on the 21st May 2012. HSE had previously disclosed this briefing note to Mr Dransfield in response to a subject access request.

Scope of Case

Mr Dransfield has been informed by the ICO that the focus of their investigation will be to establish if HSE holds further information that could be provided in response to his request. As part of this investigation, the ICO

have asked HSE to answer the following questions.

- 1. Please clarify why safety concerns raised about PFI schools in Exeter are outside the enforcement remit of HSE and would not be investigated by it.**

HSE and Local Authorities (LAs) are responsible for enforcing health and safety legislation in Great Britain. Together, they enforce health and safety legislation at individual work premises according to the main activity carried out there.

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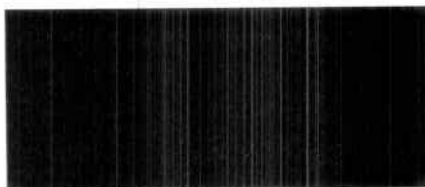
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