

PH&PP Policy Statement on Enforcement

1. Introduction

1.1. This policy statement covers all the regulatory activity undertaken by the following services in the Port Health & Public Protection Service (PH&PP):-

- a) Environmental Health;
- b) Trading Standards;
- c) Port Health;
- d) Animal Health; and
- e) Licensing.

1.2. The Vision and Strategic Aims of the Department of Markets and Consumer Protection are:-

Vision

The vision of the Department of Markets and Consumer Protection is to support the "City Together" Strategy and the Corporate Plan through the provision of high quality, efficient services to all our customers and stakeholders. In addition, in respect of the two markets outside the Square Mile (Billingsgate and New Spitalfields), to seek to contribute to their host boroughs' Community Strategies.

Strategic Aims

Our strategic aims are:

- To operate the three wholesale food markets in a manner that provides an exemplary trading environment which is environmentally sustainable, well maintained, safe, hygienic, and financially viable.
- To advise, educate, influence, regulate and protect all communities for which the department has responsibility in the fields of Environmental Health, Port Health, Trading Standards, Licensing and Animal Health.
- At all times to seek value for money in the activities we undertake so that the highest possible standards are achieved cost effectively.

1.3. This Policy Statement on Enforcement conforms with the Regulators' Code¹ and the regulatory principles required under the Legislative and Regulatory Reform Act 2006². It sets out the general principles and approach which PH&PP officers in its regulatory services are expected to follow.

1.4. The legislative functions covered by The Regulators Code may be found in The Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as

¹ www.gov.uk/government/egulatorscode

² www.legislation.gov.uk/LRA2006

amended) The PH&PP service will comply with the requirements of the code wherever possible for legislation not specifically included

- 1.5. The appropriate use of enforcement powers, including prosecution, is important both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard fair trading, health, safety and welfare.
- 1.6. In allocating resources, regulatory services should have regard to the principles set out below, the objectives published in the current PH&PP Business Plan, and the need to maintain a balance between enforcement and other activities, including inspection sampling and test purchasing.

2. The purpose and method of enforcement

- 2.1. The ultimate purpose of PH&PP's regulatory services is to ensure that those responsible for complying with, environmental health, trading standards, licensing, port health and animal health legislation manage and control risks effectively, thus preventing harm. The term 'enforcement' has a wide meaning and applies to all dealings between PH&PP's regulatory services, those it regulates and those on whom the law places duties.
- 2.2. The purpose of enforcement is to:
 - a) ensure that businesses take action to deal immediately with serious risks;
 - b) promote and achieve sustained compliance with the law;
 - c) ensure that businesses who breach legislative requirements, and directors, employees or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts, in the circumstances set out later in this policy.
- 2.3. From the point of view of our customers and stakeholders who we are here to protect, this can be summarised as:-
 - a) stopping the problem and ensuring that it does not recur;
 - b) ensuring that everything is ok – e.g. food hygiene or when they buy something or a service; and
 - c) helping businesses to trade well – i.e. safely and fairly - and not be disadvantaged by rogue traders
- 2.4. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor is its purpose to assist such claims. It does however include civil sanctions as detailed later in this Policy.
- 2.5. PH&PP's regulatory services have a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to

criminal offences and relevant civil breaches. These are detailed in 3:12 below

- 2.6. Educating, giving information and advice, and issuing enforcement letters and notices are the main means which officers use to achieve the broad aim of preventing harm, dealing with serious risks and securing compliance with the relevant legislation. Information on certain types of enforcement notices³ are required to be retained on a public register and reported to the relevant Government agency – e.g. the Health & Safety Executive.
- 2.7. Prosecutions, civil sanctions and, where appropriate, simple cautions are important ways to bring businesses to account for breaches of the law. Where it is appropriate to do so in accordance with this policy, PH&PP's regulatory services will consider the use of one of these sanctions in addition to any enforcement notice(s) to deal with immediate issues.
- 2.8. All issues encountered during inspections and incidents and complaints reported to us will be thoroughly investigated before any decisions are taken in respect of enforcement action and will also take into account the available resources and the likely course of action to be adopted.
- 2.9. In deciding what resources to devote to these investigations, PH&PP's regulatory services will have regard to the principles of enforcement set out in this statement and the objectives published in current PH&PP Business Plan. In particular, in allocating resources, PH&PP's regulatory services must strike a balance between reactive investigations and pro-active, preventative activity, including the provision of advice and education
- 2.10. PH&PP expects its regulatory services officers to use their discretion in deciding when to investigate incidents or complaints and on what enforcement action may be appropriate and these judgements will always be made in accordance with the with the Regulators' Code, and the regulatory principles required under the Legislative and Regulatory Reform Act 2006.

3. The principles of enforcement

- 3.1. PH&PP believes in the firm but fair enforcement of all the legal requirements that it enforces. This enforcement should be informed by the principles of:-
 - a) **proportionality** in applying the law and securing compliance and considering whether prosecution is proportionate to the likely outcome⁴
 - b) maintaining a **consistency of approach**;

³ Environment & Safety Information Act 1988 requires that all notices served under the Health & Safety At Work Act etc. 1974 with any element that might affect the public, are required to be entered on a public register for a period of at least three years irrespective as to whether or not they have been complied with by the recipient.

⁴ Taken from the current [The Code for Crown Prosecutors](#)

- c) **targeting** of all enforcement action where it is most needed;
- d) **transparency** about how we as a regulator operate and what those whom we regulate can expect; and
- e) **accountability** for our actions.

These principles apply both to enforcement in particular cases and to enforcement activities as a whole.

Proportionality

- 3.2. Proportionality means relating enforcement action to the risks⁵. Those who the law protects and those on whom it places duties expect that any action taken by the PH&PP's regulatory services to achieve compliance and/or bring people to account for non-compliance should be proportionate to the seriousness of any breach with respect to:-
- a) any risks to health, safety, environmental damage or economic advantage gained; and
 - b) the severity of any actual or potential harm arising from such; and
 - c) the likelihood of any such harm recurring.
- 3.3. In practice, applying the principle of proportionality means that the PH&PP's regulatory services should take particular account of how far those responsible have fallen short of what the law requires and the extent of the harm or economic disadvantage (or risk of) to others arising from any such failings.
- 3.4. Some duties are specific and absolute whereas others require action 'so far as is reasonably practicable' and PH&PP's regulatory services will apply the principle of proportionality in relation to both kinds of duty.
- 3.5. Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where businesses must control risks so far as is reasonably practicable, PH&PP's regulatory services officers, in considering protective measures taken by businesses, must take account of the degree of risk and balance it with the financial and resource implications involved in the measures necessary to be taken by businesses to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, businesses are expected to such take measures and incur costs to reduce the risk.
- 3.6. PH&PP expects relevant good practice to be promoted by its officers. Where relevant good practice in particular cases is not expressly defined, the law places the onus on businesses to establish the significance of the risks and to determine what action needs to be taken. Ultimately, the courts will, if so required, determine what is "reasonably practicable" in each particular case.

⁵ In this policy, 'risk' (where the term is used alone) is defined broadly to include any source of possible risk.

Targeting

- 3.7. Targeting means making sure that contacts and interventions, particularly pro-active ones:-
- a) are targeted primarily on those whose activities giving rise to the most serious risks of non-compliance or where the hazards are least well controlled; and that
 - b) action is focused on those who are responsible for compliance and risk control and who are best placed to control it – be they employers, manufacturers, suppliers, or others.
- 3.8. PH&PP's regulatory services have processes in place by which inspections, investigations or other regulatory contacts are prioritised according to the nature and extent of risks posed by each business' operations and any other information and intelligence received regarding the levels of complaints about that business. Their management competence is important because a relatively low hazard business poorly managed can entail greater risk to workers or the public than a higher hazard business where proper and adequate risk control measures are in place.
- 3.9. All enforcement action will be directed against those responsible for such breaches. This may be employers in relation to workers or others exposed to risks; companies, partnerships, sole traders and the self-employed; owners of premises; designers or clients of projects, directors and employees. Where there are several parties who each have responsibilities, PH&PP's regulatory services may take action against more than one when it is appropriate.
- 3.10. In deciding what enforcement action to take against an offender we will have regard to the following aims:
- a) to change the behaviour of the offender; and/or
 - b) to eliminate any financial gain or benefit from non-compliance; and/or
 - c) to be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned; and/or
 - d) for the action to be proportionate to the nature of the offence and the harm/potential harm cause; and/or
 - e) to restore the harm caused by regulatory non compliance, where appropriate; and/or
 - f) to deter future non-compliance.
- 3.11. The range of enforcement options available to PH&PP includes the following:
- a) **No action** - in certain circumstances e.g. where the detrimental impact on the community is small, contravention of the law may not warrant any action.
 - b) **Indirect action** - including referral to another authority or agency for information or follow-up action.

- c) **Verbal/written advice or warning** - where an offence has been committed but is not thought appropriate to take any further action, in which case the suggested corrective action and a timescale will be given
- d) **Fixed Penalty Notices (FPN)** - certain offences are subject to FPNs and legislation permits an offence to be dealt with by way of a Fixed Penalty Notice, we may choose to administer a FPN on a first occasion, without issuing a warning. This avoids a criminal record for the offender provided that the offender accepts the FPN.
- e) **Penalty Charge Notices (PCN)** - are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.
- f) **Penalty Notice for Disorder (PND)** - is the fixed penalty option for anti-social behaviour such as the sale of alcohol to a minor.
- g) **Statutory Notice** - these are used as appropriate in accordance with relevant legislation (they usually require offenders to take specific action or to cease certain activities). Examples include improvement notices, prohibition notices and suspension notices.
- h) **Seizure** - some legislation permits our Officers to seize goods and documents that may be required as evidence. When we seize goods, we will give an appropriate receipt to the person from who they are taken. On some occasions, we may ask the person to voluntarily surrender the goods.
- i) **Forfeiture** - some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.
- j) **Undertakings and Injunctive action under the Enterprise Act** - the range of actions under this legislation include the following:
 - *informal undertakings*
 - *formal undertakings*
 - *interim orders*
 - *court orders*
 - *contempt proceeding*
- k) **Review of Licences**- where there is a requirement for a business to be licensed by a local authority e.g. Licensing Act 2003, or other body e.g. Financial Conduct Authority, then a review or revocation of the licence or permit may be sought where the activities or fitness of the license holder is in question.
- l) **Anti-Social Behaviour Orders and Criminal Anti-Social Behaviour Orders** - where the non-compliance under investigation amounts to anti-social behaviour, then, following liaison with the Town Clerk and the Comptroller & City Solicitor, an Anti-Social Behaviour Order (ASBO) or a Criminal Anti-Social Behaviour Order (CRASBO) may be sought to stop the activity.
- m) **Taking animals into possession** - under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are

likely to suffer if their circumstances do not change, we will consider taking them into possession and applying for Orders for re-imbursement of expenses incurred and subsequent disposal.

- n) **Simple Caution** - in accordance with the current Home Office circular is used to deal quickly and simply with less serious offences and to avoid unnecessary appearances in criminal courts. A formal or 'Simple' caution is an admission of guilt but it is not a form of sentence, nor is it a criminal conviction – though it may be cited in court in certain circumstances. A record of the caution will be sent to other agencies that are required to be notified.
- o) **Prosecution** - will only be undertaken when the evidence passes the 'Evidential Test' and when it is in the public interest to do so – we will have regard to the Crown Prosecution Service Code of Practice.
- p) **Proceeds of Crime Actions** - purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

and we will continually review our position regarding the use of enforcement options and additional sanctions under the Regulatory Enforcement and Sanctions Act 2008.

3.12. Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers and all other relevant legislation (and relevant Codes of Practice), including the requirements of:

- a) Police and Criminal Evidence Act (PACE)
- b) Criminal Procedure and Investigations Act (CPIA)
- c) Regulation of Investigatory Powers Act (RIPA)
- d) Human Rights Act (HRA).

3.13. As part of the investigation process, persons suspected of breaching legal requirements will, wherever possible:-

- a) be formally interviewed in accordance with PACE;
- b) be given the opportunity to demonstrate that a statutory defence is available; and
- c) have the opportunity to give an explanation or make any additional comments about the alleged breach.

3.14. Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated, a Report compiled by the Investigating Officer and the file reviewed by a Senior Manager. We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of

any harm or loss, including potential harm and loss and its significance in making the decision. Where one of the other forms of enforcement is proposed, the decision to take a particular form of enforcement action will lie to the case officer in discussion with their team manager.

Consistency

- 3.15. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- 3.16. Businesses are entitled to expect a consistent approach from officers in the same regulatory service in the advice they tender, their issue of enforcement notices, their decisions on whether to prosecute and in the response to incidents.
- 3.17. PH&PP recognises that in practice, consistency is not a simple matter and its officers are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or contraventions involving the business, any previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law.
- 3.18. Decisions on enforcement action are discretionary, involving judgement by the officer and PH&PP has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison and Continuous Professional Development (CPD) amongst professional peer groups across the range of regulatory services.

Transparency

- 3.19. Transparency means helping businesses to understand what is expected of them and what they should expect from PH&PP's regulatory services. It also means making clear to businesses not only what they have to do but, where this is relevant, what they don't. That means clearly distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.
- 3.20. Transparency also involves PH&PP's regulatory services in having arrangements for keeping employees, their representatives, and victims of incidents or their families and complainants informed whenever possible as to the latest developments in their particular case. However such arrangements must have regard to legal constraints and requirements concerning the non-disclosure of evidence or matters prior to any court appearance or hearing.
- 3.21. This policy statement sets out the general policy framework within which PH&PP's regulatory services operate. The public, businesses, employees, their representatives and others also need to know what to expect when an officer

calls and what rights of complaint are open to them and for this our complaints procedures are set out on City of London Corporation's website.

- 3.22. When officers offer businesses or the public information, or advice, face-to-face or in writing, including any warning, they will tell the business or individual what to do to comply with the law, and explain why. Officers will write to confirm any advice, and to distinguish legal requirements from best practice advice.
- 3.23. In the case of enforcement notices, the officers will discuss the notice and, if possible, resolve points of difference before serving it. Many notices have a statutory right of appeal to a court in the event that the recipient does not accept the requirements of the notice or feels that it should have been served on some other person/business and so it is imperative that the details are correct and clear and in accordance with the principles of this Policy Statement.
- 3.24. The notice will specify what needs to be done, why, and by when, and that in the officer's opinion a breach of the law has been committed. In the case of any prohibition type notice which have the effect of immediately stopping activity or operations, the notice will explain why the prohibition is necessary.
- 3.25. If regulatory compliance can be achieved by the procurement of services of which the City of London Corporation currently provides, those being regulated will be directed to the appropriate Department or Service, whilst advising them the City of London Corporation is not the only provider and that they have no obligation to procure any services provided by the City of London Corporation over any other provider – e.g. refuse collection services, commercial waste.

Accountability

- 3.26. Regulators are accountable to the public for their actions as outlined in the Regulators' Compliance Code. This means that local authorities such as the City of London Corporation have policies and standards (such as the five enforcement principles above) against which they can be judged, and have an effective and easily accessible mechanism for dealing with comments and handling complaints.

4. Investigation

- 4.1. PH&PP's regulatory services undertake investigations in order to determine:
- a) sources of complaint – e.g. statutory nuisance, unfair trading
 - b) causes of accidents and potential risks to prevent them recurring;
 - c) whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
 - d) lessons to be learnt and to influence the law and guidance; and

e) what response is appropriate to a breach of the law.

4.2. To maintain a proportionate response, most resources available for investigation of incidents and complaints will be devoted to the more serious circumstances.

4.3. Complaints or reports of environmental nuisance, unfair trading, work-related deaths, injuries or occupational ill-health are all investigated but in deciding the level of resources to be deployed, the regulatory service in question will take account of the following factors:

- a) the severity and scale of potential or actual harm;
- b) the existence of any continuing risk or breach of the law;
- c) the business's past performance in complying with relevant legal responsibilities;
- d) the current enforcement priorities of the relevant PH&PP regulatory service;
- e) the practicality of achieving results including any evidential gap;
- f) the wider relevance of the event, including serious public concern and interest.
- g) the vulnerability of any group affected

5. Prosecution

5.1. The final decision to proceed with prosecution rests with the Director of Markets & Consumer Protection acting upon the recommendation of the PH&PP Service Director with the Comptroller & City Solicitor's advice with PH&PP's decision on whether or not to prosecute being taken in accordance with the principles set out in this Policy Statement.

5.2. The decision whether to prosecute should take account of the evidence obtained and the relevant public interest factors set down by the Crown Prosecution Service in their current Code for Crown Prosecutors⁶. No prosecution may go ahead unless the Comptroller and City Solicitor believes there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.

5.3. While the primary purpose of the regulatory services is to ensure that businesses manage and control their risks effectively and in preventing harm, prosecution is an essential part of enforcement. Where in the course of an investigation, a regulatory service collects sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors, that it is in the public interest to prosecute, then that prosecution should go ahead.

⁶ CPS Code for Crown Prosecutors www.cps.gov.uk/publications/code

- 5.4. The Code for Crown Prosecutors requires the decision to prosecute to be kept under continuous review, so that any new facts or circumstances, in support of or conversely, undermining the prosecution's case, are taken into account in the decision to continue or immediately terminate the proceedings. Where the circumstances warrant it and the evidence to support a case is available, regulatory services may prosecute without prior warning or recourse to alternative sanctions first.
- 5.5. The City of London Corporation expects that, in the public interest, its regulatory services should normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where:
- a) death was a result of a breach of the legislation;
 - b) the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
 - c) there has been reckless disregard of legal requirements;
 - d) there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
 - e) activities or trade have been carried out without or in serious non-compliance with an appropriate licence, permission or sanction;
 - f) a business's standard of operation is found to be far below what is required by law and/or is giving rise to significant risk;
 - g) there has been a failure to comply with an enforcement notice; or there has been a repetition of a breach that was subject to a Simple Caution;
 - h) false information has been wilfully supplied, and/or there has been an intent to deceive, in relation to a matter of non-compliance and/or one which gives rise to significant risk; and
 - i) officers have been intentionally obstructed in the lawful course of their duties.
- 5.6. Where its officers are subject to, or threatened with, physical assault regulatory services will always seek police assistance, with a view to seeking the prosecution of offenders.
- 5.7. PH&PP also expects that, in the public interest, its regulatory services will consider recommending prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply:
- a) it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law; and
 - b) a breach which gives rise to significant risk has continued despite relevant warnings.

6. Prosecution of individuals

- 6.1. Subject to the above, PH&PP's regulatory services will identify and recommend the prosecution of individuals if they consider that a prosecution is warranted.
- 6.2. In particular, we will consider the management chain and the role played by individual directors and managers, and will take action against them where an inspection or an investigation reveals that the offence was committed with their consent or connivance or to have been attributable to any neglect on their part and where it would be appropriate to do so in accordance with this policy.
- 6.3. Where appropriate, regulatory services should seek disqualification of directors under the Company Directors Disqualification Act 1986.

7. Disseminating Information

- 7.1. The Crime and Disorder Act 1998⁷ recognises that there are key stakeholder groups who have responsibility for the provision of a wide and varied range of services to and within the community. In carrying out these functions, the Act places a duty on them to do all it can do to reasonably prevent crime and disorder in their area.
- 7.2. Each regulatory service will fulfil its responsibilities by sharing information regarding its regulatory investigations with other such services both within PH&PP and with other external agencies including, though not exhaustively, the City of London Police, BIS, the Financial Conduct Authority, the Health & Safety Executive, the Environment Agency, the Marine & Coastguard Agency and HM Customs & Revenue.
- 7.3. If there is a shared enforcement role with other agencies - e.g. the Financial Conduct Authority, Animal Health, HM Revenue & Customs, other COL Services or the Police - we will consider co-ordinating with these agencies to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.
- 7.4. Finally, all disclosures will be in accordance with the provisions of the Data Protection Act 1998.

8. Publicity

- 8.1. PH&PP's regulatory services will also consider in all cases drawing the media's attention to factual information about charges which have been laid before the courts, but great care must be taken to avoid any publicity which could prejudice a fair trial.

⁷ Section 17 www.opsi.gov.uk/acts/acts1998

8.2. We will also consider publicising any successful conviction which could serve to draw attention to the need to comply legislation requirements, or deter anyone tempted to disregard their duties under UK law.

9. Action by the courts

9.1. PH&PP's regulatory services will continue to seek to raise the court's awareness of the gravity of any offences and of the full extent of their sentencing powers and draw to the court's attention all the factors which are relevant to the court's decision as to what sentence is most appropriate whilst still recognising that it is ultimately for the courts to decide whether or not someone is guilty and what penalty if any to impose on conviction.

10. Representations to the courts

10.1. In cases of sufficient seriousness, and when given the opportunity, PH&PP will consider indicating to the magistrates that the offence is so serious that they may wish to consider sending it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make, regulatory services should have regard to current case law and guidance

11. Conclusion

11.1. Compliance with this Policy Statement on Enforcement will ensure that PH&PP strives to be fair, impartial, independent and objective and is not influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender.

11.2. Decisions will not be influenced by improper or undue pressure from any source.

FURTHER INFORMATION

Regulatory Enforcement and Sanctions Act 2008

Regulators' Code www.gov.uk/government/publications/regulators-code

Code for Crown Prosecutors (Crown Prosecution Service) www.cps.gov.uk

Port Health & Public Protection Service

1. Our Decision Making Processes

When deciding whether to investigate any matter further, the Port Health & Public Protection Service will follow the current guidance and information of Government agencies and departments and other relevant regulatory sources:-

- the Food Standards Agency
www.food.gov.uk/enforcement/enforcework/
- the Health & Safety Executive

National Local Authority Enforcement Code

www.hse.gov.uk/lau/la-enforcement-code.htm

Enforcement Guide - www.hse.gov.uk/enforce/enforcementguide/index.htm

Enforcement Management Model - www.hse.gov.uk/enforce/emm.pdf

Incident Selection Criteria Guidance www.hse.gov.uk/lau/lacs/22-13.htm

- the Department of the Environment, Farming & Rural Affairs
Defra - Department for Environment, Food and Rural Affairs
- Trading Standards services' NTSB, Regional Intelligence Officers , Scambusters plus the City of London Police, HMRC and any other regulatory sources

2.Home Authority and Primary Authority

1. The Home Authority Principle means that City of London based businesses, where they trade or provide services that impact beyond the city, are able to get advice and support from us on matters such as legal requirements, changes to the law and so forth. This usually takes the form of a semi-formal relationship and we support the Home Authority Principle, which has been developed over many years to promote good enforcement practice and reduce burdens on business.
2. In April 2009, the Regulatory and Enforcement Sanctions Act 2008 introduced the Primary Authority Principle which in contrast to the Home Authority Principle, this is a more formal relationship including for the first time, the ability to re-charge the business .
3. A Primary Authority is a local authority registered by the Better Regulation Delivery Office (BRDO) as having responsibility for giving advice and guidance to a particular business or organisation that is subject to regulation by more than one local authority. As such any advice given to that business or organisation is nationally applicable and all other local authorities must follow it.
4. Our objective is to create full Primary Authority partnerships whenever possible which will provide increased positive benefits to both parties. PH&PP will give due consideration to any business, based in or associated with the City of London who wishes to enter into such an arrangement.
5. As part of any Primary Authority partnership we will therefore:
 - a) provide businesses for whom we are the 'Primary' with appropriate guidance and advice
 - b) maintain records of our contacts with such businesses in the BRDO's required format;
 - a) support efficient liaison between local authorities dealing with such businesses; and
 - d) provide a first point of contact for the resolution of any problems and disputes.

3. Death at work

1. Where there has been a breach of health & safety law leading to a work-related death in premises for which the City of London Corporation is the enforcing authority, the City of London Police (CoLP) will first have to consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter and they take primacy in any joint investigation.
2. To ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, the HSE, the Association of Chief Police Officers (ACPO), the British Transport Police, the Crown Prosecution Service (CPS), the Local Government Association (LGA) and the Office of Rail Regulation (ORR) have jointly agreed and published the current *Work-related deaths: A protocol for liaison*⁸.
3. Other non-signatory organisations, such as the Maritime and Coastguard Agency (MCA), Civil Aviation Authority (CAA) and the Chief Fire Officers Association (CFOA), have agreed that they will take account of the protocol when responding to work-related deaths.
4. The CoLP are responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and whether to refer a case to the CPS to consider such possible charges. The EH&PP Service of PH&PP are responsible for investigating possible health and safety offences.
5. If in the course of their health and safety investigations, they find evidence suggesting manslaughter or corporate manslaughter, they will pass it on to the CoLP. If they or CPS decide not to pursue a manslaughter or corporate manslaughter case, then the City of London Corporation will then consider bringing a prosecution for any health and safety offences in accordance with this policy statement.

⁸ *Work-Related Death - A protocol for liaison* was published in 2003
www.hse.gov.uk/pubns/misc491.pdf