

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

18 August 2008

Report of the Director of Health and Housing

Part 1- Public

Delegated

1 FLEXIBLE WARRANTING FOR HEALTH AND SAFETY ENFORCEMENT

Summary

This report seeks consent to enter into a flexible warranting arrangement with the Health and Safety Executive and all other local authorities in Kent for health and safety enforcement.

1.1 Background

- 1.1.1 Local authorities (LA's) and the Health and Safety Executive (HSE) have joint responsibility for health and safety enforcement in England and Wales. The Health and Safety (Enforcing Authority) Regulations 1998 set out which premises LA's and HSE are responsible for. In general terms HSE are responsible for manufacturing, construction sites and higher risk industries i.e. railways, mining, off shore gas/oil etc. LA's enforce the Act mainly in retail shops, catering premises, offices, leisure and cultural premises, warehouses and wholesalers which fall within their geographical area.
- 1.1.2 Mandatory guidance issued under section 18(4) of the Health and Safety at Work etc. Act 1974 requires LA's to make "adequate arrangements" for health and safety enforcement within their area of responsibility as defined in the 1998 Enforcing Authority Regulations.
- 1.1.3 At Tonbridge & Malling suitable qualified and competent staff within Environmental Health and Housing are authorised and appointed as inspectors under the Act.

1.2 The current position

- 1.2.1 Each enforcement agency may only act in premises where they have enforcement responsibility, in accordance with the Enforcing Authority Regulations 1998. These regulations do not always provide a clear allocation of premises and sometimes create artificial barriers. This enforcement division also leads to occasional situations where LA officers cannot act upon matters of immediate concern, most commonly dangerous scaffolds or practices on construction sites.

- 1.2.2 LA and HSE resources are limited and should therefore be targeted where they will have the greatest impact. Enforcing authorities are challenged by the “Revitalising Health and Safety Strategy” issued by the Health and Safety Commission (HSC) to develop coherent working partnerships.
- 1.2.3 In June 2004 the HSC, HSE and the Local Government Association (LGA) signed up to a local statement of intent indicating a commitment to partnership working. The stated aims and vision of the “Statement of intent” are detailed below:

“LA’s and HSE working jointly and in partnership, locally, regionally and nationally to a common set of goals and standards, committed to focusing resources on agreed health and safety priorities. The aim is to minimise harm from those in the workplace or those affected by workplace activities, and contribute to the health and well being of local communities.”

1.3 Flexible warranting pilot schemes

- 1.3.1 In order to further the aims of the “Statement of intent” and address the barriers to effective enforcement posed by the Enforcing Authority Regulations certain LA’s have entered into flexible warranting schemes with the HSE on a pilot basis.
- 1.3.2 Such arrangements have been trialled in Hampshire, Suffolk and Bedfordshire and the Thames Gateway in Kent. In each of these schemes a detailed Memorandum of Understanding (MOU) has been developed to clearly set out the obligations and limitations of the flexible warranting arrangement and includes such matters as officer competencies and indemnities.
- 1.3.3 Feedback from these pilots has been very positive, for example officers in the Thames Gateway pilot report that flexible warranting has enabled officers to deal expediently with situations of imminent risk in premises previously outside their jurisdiction and deliver high quality and focused joint initiatives that have had a wide reaching impact on improving local businesses and benefitting their employees.

1.4 Developing a flexible warranting scheme

- 1.4.1 Having regard to the success of the pilots it is proposed that we enter into a flexible warranting agreement with the HSE and all other Kent authorities by local arrangement and subject to the drafting of a mutually acceptable MOU.
- 1.4.2 Officers from Kent LA’s and the HSE have already met together to give some consideration to flexible warranting and how it might work throughout the county and all are in favour of proceeding further.
- 1.4.3 Subject to a suitable MOU being developed it is envisaged that flexible warranting will be used as follows:

- for proactive educative and enforcement projects where a multi-agency team, comprised of inspectors from HSE and all signatory LA's can make high impact interventions by working together. This is to start with concentration in one district and then rolling the project on to the next district according to an agreed timetable. This increases the potential for effective targeting of resource at evidence based issues;
- for reactive work where an inspector is on site for another purpose, or passing by, and notices health and safety problems that require urgent attention in a premises where they would not currently be the enforcing authority;
- for reactive work where an inspector is needed onsite urgently to deal with an event such as a workplace fatality and an officer from the current enforcing authority (LA or HSE) is either not available or is so far away that the control of the situation and the start of the investigation will be compromised. In such an instance an officer from a partner agency may be asked to attend as a first response – but only if such an officer is available and suitably competent to deal with the request;
- to share the resource of inspectors with specialist skills as need arises; and
- for LA's to be able to immediately assist each other should emergency need arise and for business continuity purposes.

1.4.4 Other benefits of the proposed scheme are:

- improved communication and cooperation between health and safety regulators;
- increased flexibility and responsiveness of health and safety regulators to situations of significant risk;
- increased opportunities for shared officer training and development; and
- comprehensive testing of the use of flexible warrants as a means of overcoming issues created by the current allocation of enforcement responsibilities.

1.5 Implementation Arrangements

- 1.5.1 The MOU is the mechanism for formalising a flexible warranting scheme. It will be used to formalise new or existing working arrangements between two or more parties. The MOU can be found in **[Annex 1]**.
- 1.5.2 A MOU is particularly useful to set out demarcation arrangements between two or more enforcing authorities where their responsibility for enforcing health and safety legislation overlaps, or where there are areas of uncertainty.

- 1.5.3 In the case of flexible warrants, the signing of a MOU is preferable to the complex route of seeking legislative change. It allows the appointment of inspectors from other enforcing authorities to be made, whilst limiting the extent to which they may execute the powers conferred upon them by their warrants. This route also brings the advantage of flexibility, whereby the MOU may be altered or if necessary terminated as the arrangement progresses.
- 1.5.4 The MOU is supported by an Inspector's Handbook, providing further details of the arrangements between the enforcing authorities, and practical tools to assist authorised officers with the operation of the flexible warrants system.
- 1.5.5 A draft MOU has been produced that contains options for two or more enforcing authorities entering into an arrangement to use flexible warrants, and allows participating organisations to operate the scheme in the following ways:
- HSE Inspectors warranted by Local Authorities; Local Authority Inspectors warranted by HSE; and
 - as, above, but with Local Authority Inspectors also being warranted by other Local Authorities.
- 1.5.6 Additionally, the extent to which flexible warrant holders will intervene on behalf of another enforcing authority can also be varied by the MOU.
- 1.5.7 All staff involved in the flexible warranting project will continue to be employed by their existing employer.

1.6 Timescale

- 1.6.1 It is proposed that the flexible warranting arrangements outlined above are put in place by October 2008. This would then enable all signatories to participate in a proactive regional health and safety initiative as part of the FIT3 programme for 2008/9. This will be an ideal opportunity to gain positive publicity for the flexible warranting venture in the context of a high impact multi-agency project across the county.

1.7 Legal Implications

- 1.7.1 The Acting Chief Solicitor has reviewed the MOU and has no adverse comments to make.

1.8 Financial and Value for Money Considerations

- 1.8.1 At this stage it is not the intention to recharge partners for work carried out under the flexible warranting arrangements. It is rather a mutually beneficial arrangement to make best use of limited resource.
- 1.8.2 It is proposed that this aspect of the arrangement will be subject to a quarterly review to ensure that all partners are benefiting equally from the arrangements.

1.9 Risk Assessment

1.9.1 The impact of not putting in place a flexible warranting agreement will be very limited in terms of day to working as the Council is already meeting its various mandatory health and safety regulatory requirements. However in the absence of flexible warranting:

- we will have no ability to intervene in situations of imminent health and safety risk to the public where these do not fall to Tonbridge & Malling BC within the Health and Safety (Enforcing Authority) Regulations 1998 (and vice versa for HSE inspectors);
- our ability to immediately react in emergency situations to ensure business continuity of the health and safety function will be slowed; and
- our ability to mount high impact awareness campaigns will be limited.

1.9.2 Our indemnity insurance cover will include the new working arrangements.

1.10 Recommendations

1.10.1 It is recommended that Committee **ENDORSE** the principle of entering into a flexible warranting arrangement with the Health and Safety Executive and other Kent LA's; and

1.10.2 **ADOPT** the Memorandum of Understanding relating to the flexible warrant scheme;

1.10.3 The DHH be authorised to enter into the MOU on behalf of the Council; and delegated authority be granted to the DHH to authorise relevant officers for the purposes of implementing the scheme.

Background papers:

contact: Jane Heeley

Kent & Medway LA and HSE Flexible Warrant Scheme
Memorandum of Understanding

John Batty
Director of Health and Housing