

AGENDA ITEM:

REPORT TO: Meeting of the	MERSEYSIDE FIRE & RESCUE AUTHORITY COMMUNITY SAFETY & PROTECTION COMMITTEE
DATE:	THURSDAY 12TH JULY 2012
REPORT NO.	CFO/100/12
REPORTING OFFICER:	DEPUTY CHIEF FIRE OFFICER
CONTACT OFFICER:	AM MYLES PLATT – DIRECTOR OF PREVENTION & PROTECTION, EXTN: 4644
OFFICERS CONSULTED:	GM GUY KEEN, WM JOHN ENNIS
SUBJECT:	COMMUNITY FIRE PROTECTION DEPARTMENT – ENFORCEMENT AND PROSECUTIONS UPDATE

APPENDIX A TITLE Equality Impact Assessment

ATTACHED – HARD COPY

Purpose of Report

1. To request that Members note the content of this report relating to Enforcement and Prosecutions activity by the Community Fire Protection (CFP) Department from 1st April 2011 – May 2012.

Recommendation

2. That Members
 - (a) note the content of the report.
 - (b) refer the report to the Performance and Scrutiny Committee for any further detailed work.

Executive Summary

Merseyside Fire and Rescue Authority (MFRA) has a statutory responsibility to enforce legislation including the Regulatory Reform (Fire Safety) Order 2005 (FSO) the order, and is the designated enforcing authority for certain 'relevant statutory provisions' of the Health and Safety at Work Etc Act 1974 that by Act or Regulation exercise controls over the storage of petroleum spirit and explosives.

By enforcing this legislation the CFP Department contributes to the organisational mission by helping to reduce the number and severity of fires and by educating business owners and employers.

The statutory duties placed upon the Authority in enforcing the above legislation

come with a cost in terms of staff time and resources. The benefits of enforcing compliance and the use of enforcement actively reduces the risk to our community from fire, environmental damage, and assists in the reduction in the incidence of criminal damage and hate crime.

This report details how Enforcement and Prosecution is embedded within the process of fire risk management, and in particular, how CFP staff contribute to reducing that risk. The provision of CFP is under review as an element of the fundamental review of support services which forms part of phase 2 of the comprehensive spending review.

Frequently, those most at risk from poor fire safety provision will be those people in the community who are most vulnerable. The enforcement actions of the CFP Department actively reduce risk to those members of the community.

Introduction & Background

3. The Order places a requirement on the “Responsible Person” to carry out a fire risk assessment to ensure that the risk from fire to relevant persons is as low as reasonably practicable.
4. Fire Safety Inspectors carry out audits to ensure that risk assessments are suitable and sufficient, undertake post fire investigations and deal with fire safety related issues raised by members of the public, MFRA personnel and other agencies.
5. Where issues are identified a number of possible actions are open to inspectors, dependant on the severity of the risk. Informal actions such as an ‘educate and inform’ letter, ‘notification of deficiencies’ letter, or an action plan could be used to deal with lower levels of risk. Where deficiencies are more serious formal action may be used including Enforcement Notices, Prohibition Notices, Alterations notices and Prosecution.
6. A Prohibition Notice may only be served where the risk to life in case of fire is so significant that it is not safe for the premises to be used until suitable remedial works have taken place.
7. In addition to our statutory duty to enforce the FSO, MFRA is also the designated enforcing authority for certain ‘relevant statutory provisions’ of the Health and Safety at Work Act 1974 that by Act or Regulation exercise controls over the storage of petroleum spirit (Petroleum Act 1928 and Petroleum Regulations 1929, Dangerous Substances and Explosive Atmosphere Regulations (DSEAR) 2002) and explosives (Manufacture and Storage of Explosives Regulations (MSER) 2005, with specific regard to Fireworks, in accordance with guidance issued by BIS and CLG).
8. Failure to comply with an Enforcement Notice, Prohibition Notice, or Alterations Notice, or contraventions of the relevant Petroleum or Explosives legislation are offences which may lead to the Authority taking legal action against the offender.

9. In order to manage the risk of enforcement and prosecution activities, and to ensure a consistent, accurate and effective approach, including the management and review of prosecution case files, the Service holds a 6-weekly Enforcement and Prosecution Meeting chaired by the Area Manager, Prevention and Protection and attended by the Clerk of the Authority, the Protection Department Group Manager and key members from Legal Services and CFP. From inception in 2010/11 the Service has seen a notable increase in the number of successful enforcement and prosecutions.
10. In carrying out enforcement activities the Authority must always apply the LBRO¹ Regulators Compliance Code and the BIS Enforcement Concordat.
11. Over the period 1st April 2011 to 6th May 2012 the Community Protection team have issued 66 Enforcement Notices of which 29 are still current and 21 Prohibition Notices of which 16 are still outstanding.
12. There have been 3 successful prosecutions where the responsible persons were fined up to £8000 each and MFRA were awarded a total of £3,085 in costs. (One prosecution under the FSO and two under MSER for illegal sale of fireworks). The Authority has successfully defended one appeal against an Enforcement Notice in Liverpool Magistrates Court and was awarded costs of £1,995.

13. Case Study

Light of Bengal Restaurant, 266-268 Aigburth Road, Liverpool.

MFRA received a report from the Immigration Service regarding accommodation being provided for members of the immigrant community in rooms above this restaurant and highlighting concerns over the safety of the accommodation provision.

Two Community Fire Protection Officers carried out an inspection of the premises and found a highly dangerous situation where there was a lack of fire separation between the restaurant and sleeping accommodation above, no alarm system for the upper floors, no emergency lighting and locked means of escape. As the risk to life of occupants was considered so high should a fire occur, the officers arranged for a Prohibition Notice to be served on the first and second floors.

Two weeks later the officers revisited the premises and found the prohibition to have been breached and evidence that the upper floors were again being used for sleeping accommodation. Evidence was gathered and a case for prosecution established. The joint owners of the premises were summons to court by MFRA and each pleaded guilty to five breaches of the Regulatory Reform (FSO) 2005 at Liverpool Magistrates Court and fines were issued totalling £8,000 including our costs. The owners have subsequently carried out all works to ensure that the premises is now safe and in compliance and the prohibition has been lifted.

Should a fire have occurred in the premises, persons sleeping on the first and second floors may have been unable to escape. This prosecution ensured the safety of

¹ Local Better Regulation Office

members of the immigrant Bangladeshi community (who are amongst those least able to provide for their own safety²) and the premises now comply with the appropriate guidance providing safe accommodation. Although the Fire Safety Order does not apply to firefighter safety, correct fire safety provision in these premises reduces the risk to fire fighters by reducing the likelihood and severity of any fire that may have occurred.

This case has resulted in an engagement process with the local Bangladeshi Community to raise awareness of fire safety issues via our Community Fire Prevention team.

14. The Protection Department continues to review enforcement activities and explore best practice with the intent of continuous improvement. Consequently the Department has recently introduced the Friskies schedule³ and improved statement writing techniques to ensure that courts are made fully aware of the consequential potential impact on the risk to life, Community and the Service, in failing to comply with the legislation. Such an approach has proved beneficial in that the methodology has proven successful in increasing the awards made by the courts for successful prosecutions.
15. All enforcement activities are published in the public register available on MFRS's internet site in accordance with the Environment and Safety Information Act 1988; (<http://www.merseyfire.gov.uk/asp/pages/safetyInfoPublicRegister/publicRegEnforcementActivity.aspx>).
16. Many of those people most affected by the inadequate provision of fire safety measures are those members of the community who are least able to protect themselves. For example our prohibition actions have protected migrant workers

² This is explained further within the Equality Impact Assessment.

³ In R v Friskies Petcare UK Ltd, the Court of Appeal strongly recommended that whenever HSE prosecutes, it should set out in writing:

- the case summary; and
- any aggravating features in schedule form that HSE say exist in the present case. All of the relevant aggravating features should be set out from the outset. If a defendant pleads guilty on the basis set out in a Friskies schedule, then other aggravating features cannot be raised at a later sentencing hearing.

The Friskies schedule should be served on the court and the defendants as soon as possible, and in any event before they enter their plea. This will normally mean serving the document with the Summons and Initial details of the prosecution case. The need to serve the Friskies schedule at the outset of proceedings has been emphasised in the case of Dilisser Roy Bernard v Dudley Metropolitan Borough Council.

[Source: <http://www.hse.gov.uk/enforce/enforcementguide/pretrial/procedure-friskies.htm>]

living in substandard, unsafe, accommodation above restaurants as well as people with drink and drug dependency living in similar accommodation above shops.

17. We work actively with partners such as the UK Border Agency, Local Authorities, Police, Ambulance Service and Care Standards Agency to actively target unscrupulous landlords and employers and to support those members of the community who are at risk.

Equality & Diversity Implications

18. An equality impact assessment is attached as appendix B.

Staff Implications

19. The issue of Prohibition / Enforcement Notices and the production of prosecution files is a labour intensive process and diverts staff from the risk based inspection programme. These costs of this time are presented to the Court when claiming for costs following a successful prosecution.

Legal Implications

20. Article 25(a) of the FSO identifies the Fire and Rescue Authority for the area as the “enforcing authority” for relevant premises. Article 26 (1) places a requirement on the “enforcing authority” to enforce the provisions of the Order (2) with regard to guidance issued by the Secretary of State. The Fireworks Regulations 2004, and the Manufacture and Storage of Explosives Regulations 2005 regulate the sale and storage of fireworks and other explosives. MFRA has the responsibility for enforcement of these regulations through it’s powers under the Health & Safety at Work etc Act 1974.
21. The enforcement powers given include the use of Enforcement, Alterations and Prohibition Notices and the power to prosecute offenders are applied with full regard to the LBRO Regulators Compliance Code and the BIS Enforcement Concordat as well as taking the Crown Prosecutors Guidance into consideration when balancing the public interest against evidence.

Financial Implications & Value for Money

22. Much of the work involved in enforcement actions is taken as part of the normal role of Inspecting within the CFP Department, however, where a prosecution is taken the Authority is entitled to claim for costs for the work carried out by our officers in building the prosecution file, carrying out associated inspections and attendance at court.
23. Prosecutions incur a further cost for a solicitor to take the case to court, that we must pay irrespective of the outcome of the case. If successful we are entitled to claim all our costs, although the level of costs awarded is at the discretion of the court’s sentencing guidelines.
24. In the current financial year, 2011/2012, £4,137 has been incurred in solicitors’ fees. The three successful prosecutions resulted in the award of £5,080 in costs.

Risk Management, Health & Safety, and Environmental Implications

25. The maintenance and provision of the CFP team is being considered as part of the fundamental review of support services as part of phase 2 of the comprehensive spending review. Any reduction in that provision has the potential to mitigate the ability of MFRA to discharge its statutory obligation as detailed in paragraphs 4 to 8 of this report.
26. A robust and consistent approach in enforcing the legislation reduces risk to our communities and staff.

Contribution to **Our Mission – To Achieve; Safer Stronger Communities – Safe Effective Firefighters**

27. In addition to our statutory requirement to enforce the FSO by carrying out these activities, we reduce the number and severity of fires - so reducing the number of call outs to fires and reducing the number and severity of injuries caused by fire. The enforcement activities also reduce the likelihood of fatalities in properties other than single domestic dwellings and reduce the financial impact of fires throughout our community, protecting businesses and employment
28. Where deficiencies which are a serious risk to life are identified, CFP officers always ensure that internal partners (Operational crews, MACC, Operational planning, Senior Officers) are made aware of the additional risks to community members and to firefighters should an incident occur.
29. The use of our enforcement powers acts as a strong message to responsible persons of the need to comply with the legislation and so helps to reduce the risk to life and the likelihood of fire.

BACKGROUND PAPERS

N/A

***Glossary of Terms**

BIS	UK Department for Business Innovation and Skills
CLG	Communities and Local Government
LBRO	Local Better Regulation Office
MSER	Manufacture and Storage of Explosives Regulations, 2005
FSO	Regulatory Reform (Fire Safety) Order 2005
MFRA	Merseyside Fire and Rescue Authority.
CFP	Community Fire Protection