

Report to Environment and Licensing Committee

Subject: Health and Safety Prosecution under the Health and Safety at Work Etc. Act 1974 – Section 3

Date: 18 January 2021

Author: Senior Legal Officer

Purpose

To inform members of an incident involving serious breaches of health and safety law at a local company and obtain Committee approval for legal proceedings to be instituted by an authorised officer.

Recommendation(s)

THAT:

- 1) Members approve that a prosecution is brought subject to the Head of Governance and Customer Services being satisfied with the evidence.**
- 2) Members authorise Doreen Cunnington Environmental Health Officer to bring proceedings in her name as the investigator into this incident as required by Section 38 of the Health and Safety at Work Etc. Act 1974.**

1 Background

- 1.1 The Council's Environmental Health Officers (EHOs) are authorised to enforce Health and Safety legislation, ensuring that duty holders manage the health and safety of their workforce and those affected by their work.

Under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013 all employers are required to report certain work related accidents to the Council. Following the receipt of a RIDDOR report in January 2021 officers have been investigating a serious incident involving a member of the public suffering a significant injury from a piece

of machinery which occurred during a demonstration of the piece of machinery at the company's premises.

- 1.2 As the appropriate authority to investigate such incidents, authorised officers from the Environmental Health Team have identified potential serious breaches of health and safety legislation at the premises which lead to/contributed to the incident.
- 1.3 Under section 3(1) of the Health and Safety at Work Etc. Act 1974 (HASAWA): It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety. It is an offence to breach this duty unless it can be shown that it was not reasonably practicable for them to do more than they did to achieve the required objectives of health and safety.
- 1.4 The investigating officers have utilised the Health and Safety Executive Enforcement Management Model and determined that a prosecution should be brought in this case.

The case has been passed to legal officers where a full review of the evidence gathered to date including a detailed response from the company has taken place. Having considered the Health and Safety Executive Enforcement Policy Statement, the Council's Enforcement Policy and the Code for Crown Prosecutors and the relevant legislative requirements alongside of the evidence officers have determined that a prosecution should be brought in this case. It is not felt any other enforcement action is appropriate due the severity of the breaches, the severity of the injury caused and the necessity for the duty holder to be held to account.

- 1.5 The HASAWA requires any prosecution for such offences as under section 3(1) must be brought in the name of an authorised officer rather than the Council as an entity.

2 Proposal

- 2.1 To obtain members approval that a prosecution be brought against the company subject to the Head of Governance and Customer Services being satisfied with the evidence.
- 2.2 A prosecution is considered a proportionate response to the serious breaches of health and safety law and the actual harm caused in this case. Serious personal injury was caused to a member of the public due to the failings of the company.

- 2.5 A prosecution is required to ensure that the duty holders are held to account for their significant failures to implement health and safety law.
- 2.6 If a prosecution is brought in accordance with the HSAWA Health it has to be done in the Inspectors name, which in this case is Doreen Cunnington, as such it is proposed that members authorise the proceedings be taken in the Inspector's name.

3 Alternative Options

- 3.1 To take lesser enforcement action against the company such as issuing a warning or caution. A disadvantage of this would be that the duty holders would not be held to account for the serious breaches in this case. It may also send a message that the Council will not prosecute when people show complete disregard to the health and safety legislation and when a significant injury is caused. Due to the reasons highlighted above it is not felt that any other enforcement action short of prosecution would be appropriate in this case.
- 3.2 Not to authorise Doreen Cunnington to bring proceedings in her name. This would result in the Council being unable to bring a prosecution. No other officer can be authorised as it has to be the inspector which in this case was Doreen Cunnington. To be clear, prosecution is a last resort where other enforcement action is considered not to be appropriate.

4 Financial Implications

- 4.1 The financial implications for bringing a prosecution would be met from existing budgets. In the unlikely event that the Council were to lose the court may award costs against us.

5 Legal Implications

- 5.1 The legal implications are as highlighted in this report. A review has been undertaken and officers are satisfied that there is sufficient evidence to prove a realistic prospect of conviction for an offence under the HSAWA by failing to discharge the duty under section 3 of the HSAWA and that it is in the public interest to prosecute.

6 Equalities Implications

- 6.1 There are no equalities implications arising from this report.

7 Carbon Reduction/Environmental Sustainability Implications

- 7.1 There are no carbon reduction/sustainability implications arising from this report.

8 Appendices

8.1 None.

9 Background Papers

9.1 None identified.