



Birmingham Health, Safety & Environment Association

721 Hagley Road West
Quinton, Birmingham B32 1DJ
Email: secretary@bhsea.org.uk
Website: www.bhsea.org.uk
Tel. No. 07881 290 238

Registered Charity No.: 255523

Secretary: *Liz Prohett BA (Hons) CMIOSH*

Newsletter

April 2012

Monthly Meeting 16th April 2012

Chairman, Dally Masaun welcomed the speaker and members to the meeting. Apologies were received from Steve Parton.

Presentation – Fee For Intervention

Peter Galsworthy, Head of Operations, HSE West Midlands



Why the Change?:

- A change of approach to health and safety by the Coalition Government
- A 20% reduction in funding for the HSE. .Which has meant a fall in the number of inspections by 30% to about 22,000 inspections nationally per annum

- A change of focus to high risk workplaces and where risks are not being adequately controlled. (This has always been part of the HSE's strategy but it is now being made more explicit.) Low risk workplaces that are in compliance are less likely to see an HSE inspector
- A wish to reduce the burden of legislation on businesses. To achieve this, the H.S.E. is revisiting its guidance, codes of practice etc., and giving information on the specific measures organisations need to carry out to comply. This should provide greater clarity so that they know when they are in compliance.
- The introduction of a 'Fee for Intervention' (FFI).

Fee for Intervention – What Does This Mean?

Charging already applies to those organization's classified as high risk. This is being extended to all organization's regulated by the H.S.E. The Government claims that FFI will

- generate funds for the HSE,
- make a more level playing field for businesses. Currently, it is claimed by some that those businesses that do not resource health and safety adequately and operate unsafely have an unfair advantage over their competitors who do.
- make non-compliant businesses invest in health and safety.
- affect 1% of all businesses.

FFI Time Table

After being announced in March 2011, there has been public consultation and a process of 'dry' and 'shadow running' with the intention to introduce FFI in April 2012. However, due to some 'technical' decisions that the Government still needs to make, the introduction has been put back to October 2012.

Summary of FFI

When carrying out an inspection, if an inspector finds a 'material breach' of regulations and issues anything in writing then FFI will be invoked for the whole of that visit, including:-

- the time to write to the business, (including instant visit reports, emails, letters, improvement notices or prohibition notices), and
- time spent carrying out further investigation or information gathering, including consulting with other inspectors and specialists
- return visits to check on progress and to confirm a satisfactory conclusion.

The fee will be £124 per hour. It is not clear if this includes VAT or whether VAT is applicable. Invoices will be sent out every two months (in the event of a long running case) with 30 days to pay.

If a breach is serious enough for a prosecution to be brought by the HSE, FFI will not apply to the costs of the prosecution. Costs will be recovered through the courts as they are at present.

Which Agencies Can Apply FFI?

FFI only applies to the HSE. If the police take the lead in a fatal accident enquiry, they will not be able to recover their costs within FFI. However FFI applies when the case is handed over by the police to the HSE to continue investigating and to take enforcement action. Local Authorities will not apply FFI.

FFI Disputes and Queries

A process has been put in place to deal with these. Initially the local senior manager would arbitrate. If necessary it can then be escalated to a complaints department based in Bootle. Here the dispute or query will be heard by a panel of senior HSE staff and independent members. Their decision is final. It is not clear if appellants can appear before the panel in person or just present written submissions.

HSE has been preparing intensively for the introduction of FFI. Inspectors have been made familiar with FFI and how it should be implemented with guidance being drawn up for inspectors. 'Dry' and 'shadow runs' have been carried out of both the procedures and implementation. The outcomes of these have been reviewed by senior management and by peer review by the inspectors themselves.

Guidance For Duty Holders:

Guidance will be available for duty holders, and when attending meetings and events inspectors are explaining FFI.

Invoking FFI

An inspector will invoke FFI

'when in the opinion of the HSE inspector, there has been a contravention of health and safety law that requires written notification (email, instant visit report, letter, enforcement notice or prosecution) of the contravention to the duty holder'.

In determining whether a written notification is required and if so what level of notification, the inspector will do this in accordance with the HSE's Enforcement Management Model (EMM). Using the EMM the inspector determines the 'risk gap' between the risk the breach poses and the benchmark standard that is expected. The inspector will then use the model to determine what is needed to ensure compliance, which often will include looking at an organisation's health and safety track record.

A typical example of how an inspector would conduct an inspection:

1. On arrival the inspector would clearly state the purpose of the inspection and explain FFI. The inspector would note the time the inspection started.
2. If the inspector was looking at say, machinery guarding and found a potential breach, e.g. a loose but working interlock, they might just ask verbally for the interlock to be tightened at that point, in which case no FFI charge would result .

3. If the inspector found a clear material breach, e.g. a missing guard or interlock, and considered that some written notification would be required, the inspector would inform the accompanying organisation's representative, that "a material breach has occurred and FFI would apply" (or words to that effect). FFI would then apply from when the visit started.
4. The inspector would then probably investigate further, looking at the management systems that allowed such a breach to occur. The inspector would decide what further action was required by the duty holder and agree how that would be achieved; for example, by compliance with an Improvement Notice. The duty holder would be billed for the work of the H.S.E Inspector up to the point when the material breach has been rectified.

Members' Questions

Peter's presentation prompted a lot of interest and questions from those present.

Q. What do inspectors think about FFI?

A. In general, they would rather not have FFI. Many feel FFI is likely to impact on their relationships with organisations and adds a level of bureaucracy to the job. However, inspectors are professional about the way they work and committed to make FFI work.

Q. Will a less experienced inspector take longer to carry out an inspection and/or investigation and so consequently charge more?

A. H.S.E. has systems and procedures in place to ensure consistency in our approach. However, every business has a spectrum of staff at different stages of their development who are likely to do things at different speeds. H.S.E. is no different...duty holders are likely to understand this.

Q. HSE say that FFI is designed to create a level playing field between organisations that resource health and safety adequately so that they comply with legislation and those that do not. Yet the HSE say only 1% of organisations will be affected by FFI. How will this 'level the playing field'?

A. From what the HSE has gathered, larger companies consider that FFI is a positive measure, as it is supportive and it will help to stop them being undercut by those that take health and safety less seriously.

Q. At present if you get an improvement or prohibition notice it is put in the public domain... Will the amount charged under FFI be added to this information so that the press can report and keep a league table of how much is charged?

A. No, FFI charges for letters will not be put in the public domain nor will accompany notices put in the public domain.

Q. If an inspector turns up unannounced to a small firm and the boss is away from the premises, the boss will not be very pleased to return to find that the inspector has been and that the company is to be hit for several hundreds of pounds under FFI. Will inspectors turn up more often 'by appointment'?

A. FFI will not change our approach to visit planning. Most inspections are made without appointment. Inspectors generally make contact with absent managers as soon as they can, during or after the inspection to discuss the key issues emerging. Where they do not, they do try and contact an appropriate person in management at the start of the visit and/or at the end, by telephone if necessary.

Q. If an inspector looks hard enough they can nearly always find some minor material breach. Can organisations be reassured that FFI is not just a scheme to raise money for the HSE?

A. The HSE enforces following the Enforcement Management Model. This aim of the Model is to give clarity and transparency to the way inspectors work and make decisions. It is not a money making scheme.

Q. If more than one inspector visit together will there be a charge for both if FFI is invoked.

A. That depends on the situation; for example, if a specialist inspector was providing technical expertise to a field inspector on potential COSHH contraventions, the work of both inspectors would be invoiced for.

Q. Do the HSE still have Health and Safety Awareness Officers?

A. Their role has now changed. Previously, they would visit and offer advice. Now their role is to assist an inspector when the inspector is carrying out an investigation, e.g. gathering evidence, taking some statements, liaising between the parties involved etc. Their time is not currently charged for separately. The £124/hour covers an inspector and all the assistance they need.

Q. How will FFI be invoked on a site with a large number of subcontractors?

A. As a general rule FFI will be apportioned to those who are responsible for a particular breach. Inspectors are gaining experience addressing this issue during the 'Shadow Run'.

Q. Does the money raised by FFI go to the HSE or general Government funds?

A. This is still unclear. H.S.E. is currently discussing a number of technical issues with the Department for Work and Pensions (DWP) and other government departments and FFI has been delayed from April 2012 to October 2012.

Q. The HSE is cutting its staff by offering retirement to its older officers, so by definition (some would argue), more experienced staff. How will HSE maintain its professionalism?

A. Before the cuts the HSE regularly recruited staff and some of these are still coming up through the HSE's robust and comprehensive training scheme. These people, together with the core of experienced inspectors that the HSE has will ensure professionalism is maintained.

Web links

<http://www.hse.gov.uk/aboutus/fee-for-intervention/index.htm>
<http://www.hse.gov.uk/enforce/>
<http://www.hse.gov.uk/enforce/enforcepolicy.htm>
<http://www.hse.gov.uk/enforce/emm.pdf>
<http://www.hse.gov.uk/managing/>
<http://www.hse.gov.uk/managing/regulators/regulators.pdf>

Secretary's Postscript:

- Can Members who have not submitted their subscriptions for 11/12, please forward to the Secretary as soon as possible. If you have a query about your subscription, please contact the Secretary on 07881290238 (mobile), secretary@bhsea.org.uk (email).
- One of our Members, Andy McCluskey, has sent us the details of a job vacancy that may be of interest to some of our self-employed Members:

Self employed Site based H&S Advisors required to cover CDM Projects in the Automotive Industry in the Birmingham area. The work will be adhoc and may vary from 2-7 days and possibly up to 6 weeks duration at a time. Site hours are 7am – 6pm Monday to Sunday. Because of the nature and frequency of the work, only interested parties who are resident within the Birmingham area will be considered. Please send your c.v to andymccluskey@btinternet.com

Date of the next Meeting

**2.00 pm on Monday 14th May 2012
at the Birmingham Medical Institute**

Slips and Trips – An NHS Perspective

AND

Members' Corner

Any Volunteers this month to step into Doug Hunter's footsteps?

Don't forget the buffet lunch at 1.15 pm!