



NOTTINGHAMSHIRE
Fire & Rescue Service
Creating Safer Communities

Nottinghamshire and City of Nottingham
Fire and Rescue Authority
Community Safety Committee

CASE SUMMARY FOR A RECENT REGULATORY REFORM FIRE SAFETY ORDER 2005 PROSECUTION

Report of the Chief Fire Officer

Date: 09 January 2015

Purpose of Report:

To provide the Community Safety Committee with an overview of the recent court case involving the Fire Authority in pursuant of fire safety breaches under the Regulatory Reform Fire Safety Order 2005.

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1. BACKGROUND

- 1.1 The current legislation governing fire safety in non-domestic premises in England and Wales is The Regulatory Reform (Fire Safety) Order 2005 (referred to in this report as “the 2005 Order”). Article 26 of this legislation states “*every enforcing authority must enforce the provisions of this Order*”. Article 25(a) clarifies that the enforcing authority is “*the fire and rescue authority for the area in which premises are situated*”.
- 1.2 One of the Fire Protection Department’s key roles is to meet the Fire Authority’s statutory obligation to enforce the 2005 Order and in doing so protect the public from unsafe premises. This obligation is met primarily through a risk based inspection programme, supported by targeted inspections following the receipt of complaints from other agencies, members of the public and intelligence from operational crews.
- 1.3 Inspecting officers are required to follow government guidance with regard to better regulation. The objectives of any inspection are to protect relevant persons, identify hazards to operational crews and to assist the responsible person (RP) to meet his/her obligations under the 2005 Order. Officers at all times are encouraged to educate and inform RP’s whenever possible as a preference to formal enforcement action. Formal action when deemed necessary ranges from the issuing of Enforcement Notices, Prohibition Notices, and in extreme circumstances, prosecution through the criminal courts.
- 1.4 Annually the Service’s inspecting officers carry out over 2000 visits to premises, including approximately 500 pre-planned audit inspections. Of these inspections approximately 15 result in Enforcement Notices, 20 in Prohibition Notices and 5 result in prosecution through the courts. Clearly the vast majority of the inspectorate’s inspection activity (98%) involves supporting businesses by providing advice and guidance on cost effective solutions to identified areas of non-compliance.

2. REPORT

- 2.1 This report concentrates on two properties in North Nottinghamshire, which were rented on a short term basis to various groups including stag/hen parties, wedding parties and groups of friends. Both properties were offering sleeping accommodation for approximately 14 persons (28 in total).
- 2.2 The properties first came to the attention of the Fire Authority in 2010 via a complaint from a member of the public who had stayed there and had concerns with regard to the standards of fire safety.
- 2.3 The premises were inspected by officers in 2010 and deficiencies were identified at both properties in respect of the inadequate fire warning systems and unprotected escape routes from the upper floors. The inspecting officer

spent some time with the owner, offering advice on cost effective solutions to rectify the identified deficiencies.

- 2.4 As a result of this inspection an informal Notice of Deficiencies was sent to the owner identifying the areas of concern at both premises.
- 2.5 In 2011 there was a fire at one of the premises. Further advice was given to the owner by the attending crews.
- 2.6 In 2012 the premises were re-inspected by the Fire Authority as part of the risk based inspection programme and were identified as a premises providing sleeping accommodation with a poor inspection history.
- 2.7 During this inspection, officers discovered that the fire safety standards at both premises had declined significantly. The owner now claimed that the 2005 Order did not apply to his premises and subsequently failed to demonstrate any intent whatsoever to rectify the identified deficiencies at either premise.
- 2.8 As a result of his findings and to prevent an on-going risk to members of the public, the inspecting officer issued formal Enforcement Notices to the owner who reacted in an aggressive manner. From this point forward the owner became difficult to deal with, for example, numerous complaints, freedom of information requests and correspondence exchanges. This was recognised by the judge in his summing up.
- 2.9 Following an initial magistrate's court hearing and cancelled appeal hearing The Fire Authority requested that the court award costs and a sum of £2,500 was awarded. In awarding costs the magistrates commented that the appeal was "*entirely without merit*". To date these costs remain unpaid by the owner.
- 2.10 Officers re-inspected the premises for compliance with the enforcement notice in February 2013 and discovered that works required had not been completed to an acceptable standard. Other attempts to visit the premise were denied which is a breach of Article 27 of the 2005 Order and a criminal offence
- 2.11 The owner subsequently applied to the magistrates' court to re-open his appeal against the Enforcement Notice and following several adjournments this request was denied by the magistrates. A further costs application was submitted to the magistrates who awarded the Fire Authority full costs of £4,444. To date these costs also remain unpaid by the owner (total now outstanding £6,944).
- 2.12 The owner finally appeared at Nottingham Crown Court in February 2014 for a plea and case management hearing; he entered pleas of not guilty to all but two charges. The matter was adjourned to 29 September 2014 for a full trial.
- 2.13 On the second day of this trial the owner changed pleas to guilty on several charges. The Fire Authority took the decision not to pursue the remaining charges due to public interest.

- 2.14 On 20 November 2014 at Nottingham Crown Court, the owner received fines totalling £22,000 and was ordered to pay NFRS £78,000 towards their costs. (a total financial penalty of £100,000).
- 2.15 In passing sentence, Judge Dickinson said the defendant had ignored the advice of fire officers, and ignored (repeated) warnings. He added that he had deliberately and persistently run risks with the lives of others. He went on to say that he feared it was not about saving money but more a case of *'stubbornness, pig-headedness and picking a fight with fire officers rather than working with them'*, that had led the owner to fail to carry out the necessary improvements.

3. FINANCIAL IMPLICATIONS

- 3.1 When pursuing litigation, costs originate from two areas, internal investigation expenses and external legal fees.
- 3.2 Following a successful prosecution (the checks and balances procedures ensure that NFRS only prosecute where absolutely necessary and subsequently have a 100% record with regard to achieving success in the courts) counsel representing the Fire Authority is instructed to apply for full costs from the defendant; these applications always include recovery of both internal and external costs. To date the Fire Authority's legal representatives have an excellent record in achieving cost awards from both the Magistrates and Crown Courts minimising the burden on the public purse.
- 3.3 The costs in this case are far in excess of any previous cases presented to the courts predominately due to the activities of the defendant, including:
- Maintaining a "not guilty" stance until the case had been fully prepared for the Crown Court, this resulted in investigators, solicitors and counsel having to undertake substantial preparation for a full jury trial.
 - Submitting numerous erroneous complaints regarding the conduct of inspecting officers to elected members, MPs, Government departments, Police and local and national press. These complaints had to be investigated and responded to, which in some instances involved obtaining protracted legal advice.
 - Submitting numerous requests under the Freedom of Information Act, including repeated requests regarding the Fire Authority's investigations, these requests had to be processed in conjunction with legal advice.
 - Pursuing appeals, applications to re-open withdrawn appeals and judicial reviews of magistrates' decisions, all of which required protracted legal advice, preparation and representation in court.
- 3.4 Investigating officers have taken every step to keep costs to a minimum, including preparing and presenting an expert report internally (a saving of a

quoted £20,000) providing counsel with a detailed technical response to the submitted defence statements and subsequent correspondence.

4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS

A full departmental debrief of the case is planned and any learning points, including areas of good practice taken by the Service will be submitted for action and/or implementation.

5. EQUALITIES IMPLICATIONS

An equality impact assessment is not necessary as this report serves as a factual account of recent court action.

6. CRIME AND DISORDER IMPLICATIONS

There are no crime and disorder implications arising from this report.

7. LEGAL IMPLICATIONS

- 7.1 The implications of the fire authority having knowledge of premises being in breach of the Fire Safety Order and not exercising its statutory duty would be numerous and far reaching. A failure to follow legal process when responsible persons refuse or fail to adhere to fire safety legislation would place lives of the public and potentially fire service personnel at risk.
- 7.2 This failure would also create a reputational risk that fire safety legislation designed to protect people and keep them safe could be ignored. This could lead to a reduction in general fire safety standards throughout the county and an increase to more severe property fires and heightened risk to life.
- 7.4 NFRS will do everything in its power to educate, inform and support businesses to improve their safety but in the minority of cases where court action becomes unavoidable, a very clear message is sent to all businesses and their owners that the responsibility of fire safety in commercial premises must be taken seriously.

8. RISK MANAGEMENT IMPLICATIONS

There are no risk management implications arising from this report.

9. RECOMMENDATIONS

That Members note the contents of this report and the workload that this case type creates for the organisation.

10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)

None

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