

QBE European Operations

# Issues Brief

## **Fees for intervention - 1<sup>st</sup> annual review**

January 2014



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## The Health and Safety Executive (HSE) introduced the Fees for Intervention (FFI) scheme on 1 October 2012. Twelve months on from its introduction, QBE review the impact of this ground breaking revenue raising scheme.

### Background

In October 2010, the Department of Work and Pensions announced that, following the coalition Government's comprehensive spending review, it was cutting the HSE's grant by 35% over four years from April 2011 – roughly equivalent to £80 million. To recoup some of this loss, the Government introduced FFI to recover the costs from businesses failing to comply with health and safety regulation.

### The scheme

The scheme applies to all businesses and organisations inspected by the HSE. Inspections by other regulators, such as local authority environmental health officers, are not affected. Equally, FFI does not apply to businesses already paying fees to the HSE for their work through other arrangements, such as COMAH charges.

The intention is that the HSE recovers the cost of its regulatory work, currently £124 per hour, from duty holders found to be in 'material breach' of health and safety law that occurred after 1 October 2012. This will be either from a proactive or a reactive visit where the inspector assesses that there has been a material breach serious enough for them to notify the duty holder in writing of that contravention.

In order for an FFI to apply, the breach must be either of the Health and Safety at Work Act 1974 or Regulations made under it. Exemptions, for instance, include the Working Time and Consultation with Employees Regulations.

A material breach is defined in HSE guidance as where an inspector is 'of the opinion that there is or has been a contravention of health and safety law that

requires him to issue notice in writing to that effect'; therefore it includes a letter, an Improvement or Prohibition Notice or a prosecution.

Before deciding to notify the duty holder, an inspector must ensure the decision on the level of any enforcement action is proportionate in all the circumstances.

Any notification must make clear which contraventions are considered material breaches.

### Key points from first 12 months of FFI

In the first 6 months of FFI, HSE inspectors issued 5766 invoices and in the second quarter, 60% of HSE inspections resulted in the raising of an invoice.

The final batch of invoices issued before HSE's 2012/13 year end yielded over £1 million in receipts. This is a £232,000 increase on the totals collected in the preceding period. This increase appears set to continue as new cases are added to the case load, by further initiatives such as March 2013 construction site 'blitz' that was repeated in September 2013.

The average invoice total (per two month period, not per intervention case) is also on the increase and is at £464 according to HSE figures. Following an initial high of an average of £513 (caused, perhaps, by the enthusiasm of FFI's inception) the average dropped slightly.

The number of invoices issued also appears to be steadily increasing, mainly due to pre-existing legacy work being replaced by new FFI cases but there appear to be 'spikes' during months where the HSE has undertaken a targeted initiative: for example, there was a mammoth 41% increase (to 2,541) during the last reported period which may be due to ongoing HSE projects during that period.

The construction and manufacturing sectors account for 70% of the total invoices generated (31% and 40% respectively) with other 'HSE Priority' sectors attracting fewer inspections and fewer FFI cases.

It is clear from the statistics that HSE are following up more RIDDOR reports as the number of invoices issued as a result of RIDDOR reportable incidents increased from 12 to 166 at the year end. This suggests that employers submitting RIDDOR reports are more likely to be visited by HSE. Interestingly, this includes RIDDOR reported occupational health issues, such as asthma and dermatitis, which is a new target area for the HSE.



Towards the end of the year, 3<sup>rd</sup> party specialists' time began appearing on invoices which signifies that more serious and/or technical cases are now starting to come through the FFI system. Generally these are cases that end up being seriously considered for prosecution at which point the FFI 'civil penalty clock' stops and the criminal proceedings meter starts running.

Inspectors have invoiced for the time they have spent identifying the breach, advising on putting it right, investigating, and taking enforcement action. Included is all time spent on carrying out visits, all time on the site during which the material breach was identified, the writing of letters, notices, reports, taking statements and obtaining specialist reports for complex issues.

Chargeable time runs from the start of the visit when the material breach is identified until it is corrected. Payment is due within 30 days. Non-payment is a civil debt, not a criminal penalty but it is not covered under the terms of the Employers Liability policy.



### Disputes and appeals

There is a dispute procedure in place. If a dispute is raised, the enforcement action taken will be reviewed by a senior manager in the HSE. If the duty holder is not satisfied with the response, then a further appeal is available to a panel comprising two HSE staff and an independent representative.

However, a surprising statistic is that only 2.5% of invoices have been queried by recipients. There were 145 appeals which resulted in 36% of those invoices being amended. Merely accepting and paying invoices could be construed as an admission that the organisation has breached the law. Equally, this may have a detrimental affect on defending civil liability personal injury claims.

Invoices will be issued every two months until the inspector is satisfied the breach has been remedied, so paying the first one does not mean there are not more to follow and will make it difficult to challenge later ones.

It is very important to realise that the HSE has stated it cannot give any assurance that the fact an invoice has been paid will not be used in evidence in any subsequent criminal prosecution – so effectively used as a confession.

If an appeal is unsuccessful, organisations will have to pay for the HSE's time spent in dealing with the dispute at the FFI hourly rate. This may partially explain the lack of appeals. If the dispute is upheld, the HSE will refund any invoices or part invoices that have been paid.



### Conclusions

The figures suggest that FFI is working as envisaged by the HSE and coalition Government. As teething problems peter out and inspectors become more familiar with the process, businesses can expect FFI to continue to play a part in the enforcement of health and safety law in this country.

That being the case, businesses need to ensure they fully understand the system and what the HSE are seeking. They should ensure they have a strategy in place to deal with HSE Inspector visits and review their significant hazards and ensure their controls are effective to minimise risk. Equally, businesses should make accurate notes of an Inspector's visit, comments and findings with a 'wrap up' meeting at the end of the inspection an ideal time to record the comments and outcomes.

QBE believe that the FFI system provides an additional incentive for businesses to improve their overall risk management strategies to reduce their potential to be in 'material breach' of health and safety laws.



Completed 3 January 2014 - written by and copy judgments and/or source material is available from Mike Barraclough (contact no: 01274 421142, e-mail: michael.barraclough@uk.qbe.com).

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