

REPORT REFERENCE NO.	CSC/23/5
MEETING	COMMUNITY SAFETY COMMITTEE
DATE OF MEETING	31 JANUARY 2023
SUBJECT OF REPORT	PROTECTION ENFORCEMENT
LEAD OFFICER	ACFO Gerald Taylor, Director of Service Delivery
RECOMMENDATIONS	<i>That the report be noted.</i>
EXECUTIVE SUMMARY	Devon and Somerset Fire and Rescue Service are the enforcing body for fire safety within the Authority area. The Service's fire safety teams and operational crews carry out the risk- based inspection programme. Where possible, the Service will assist owners and responsible persons to comply with the legislation and keep people safe. The Service will, however, also enforce through legal notices, prohibitions and prosecutions where necessary.
RESOURCE IMPLICATIONS	Business as usual. No resource request
EQUALITY RISKS AND BENEFITS ANALYSIS	N/A
APPENDICES	A. Examples of Fire Safety Prosecutions
BACKGROUND PAPERS	None

1. **INTRODUCTION TO LEGISLATION**

- 1.1. The Regulatory Reform (Fire Safety) Order 2005 applies in England and Wales and requires 'responsible persons' (employers, building owners, managers etc) to take measures to protect people. The law does not allow the Service to enforce in order to protect property.
- 1.2. If responsible people do not comply with the requirements of the Fire Safety Order, they could be fined and/or go to prison.

2. **WHERE THE SERVICE CAN ENFORCE**

- 2.1. The Regulatory Reform (Fire Safety) Order 2005 (RRO) applies to almost all premises excluding single dwellings such as individual flats and houses where other legislation is more suited.
- 2.2. There are around 170,000 premises in Devon and Somerset to which the RRO applies.
- 2.3. The Service's Risk Based Inspection Plan identifies which of these premises present the highest risk. This information is utilised to target resources in order to have the biggest impact on public safety.
- 2.4. The legislation requires the Fire and Rescue Authority to enforce the provisions of the RRO.

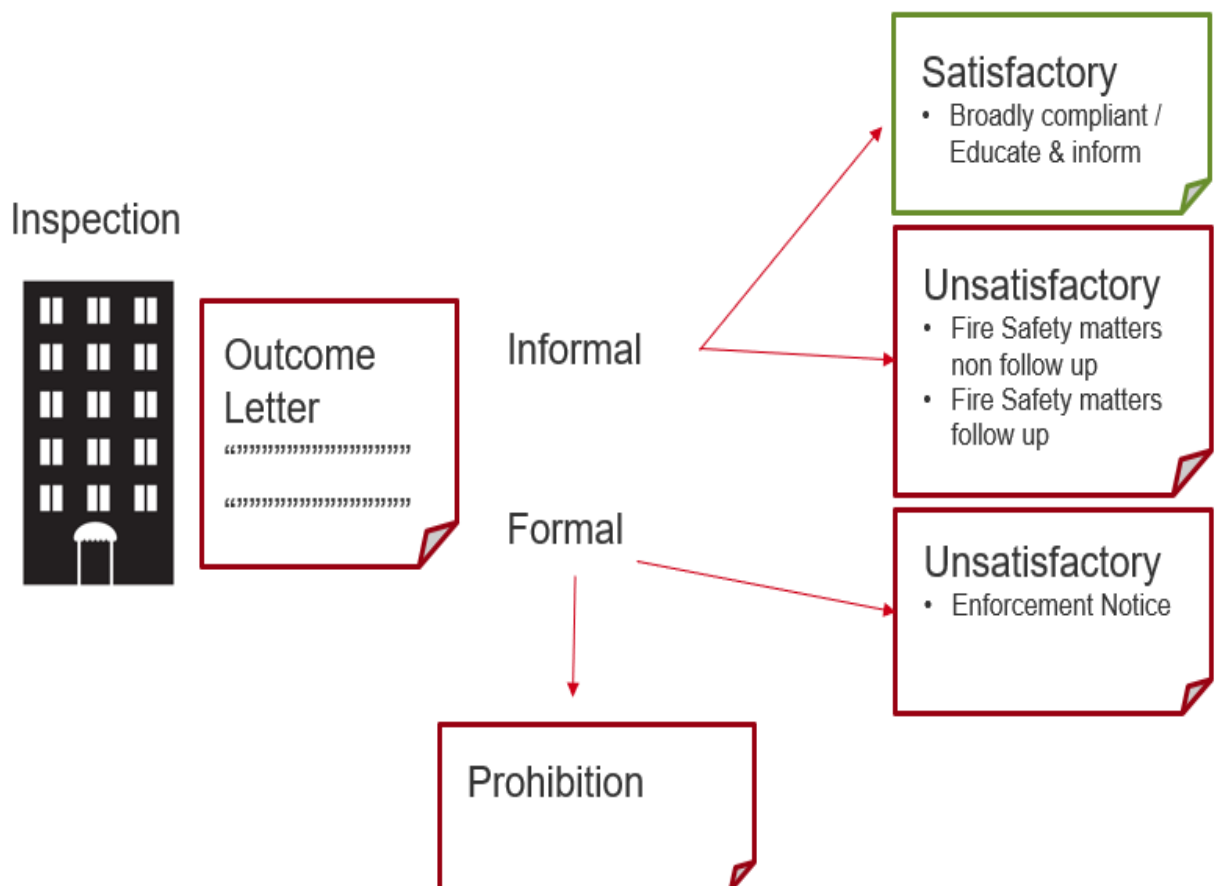
3. **RECENT AND IMMINENT LEGISLATIVE CHANGES**

- 3.1. There have been some changes to fire safety legislation following the devastating Grenfell Tower Fire in 2017.
- 3.2. The Fire Safety Act 2021 (the Act) makes it clearer where the Fire Safety Order applies in certain types of buildings. This change came into force on 16 May 2022.
- 3.3. The Fire Safety (England) Regulations 2022 have been introduced to meet the majority of the recommendations made in the Phase 1 report of the Grenfell Tower Enquiry and introduce new duties for the owners or managers (responsible persons) of high-rise flats and multi-occupied buildings. The Regulations will come into force on 23 January 2023.

4. **HOW THE SERVICE ENFORCES**

- 4.1. The Service carries out over 4000 inspections of various levels annually across Devon and Somerset.
- 4.2. A fire safety helpdesk is in place to ensure that advice is easily available for those who need it. This also allows the Service's own, dedicated inspectors and operation staff to have a single point of contact to help them when inspecting and attending incidents. This is extended for all staff by an out of hours team who can provide the same advice during evenings and weekends.

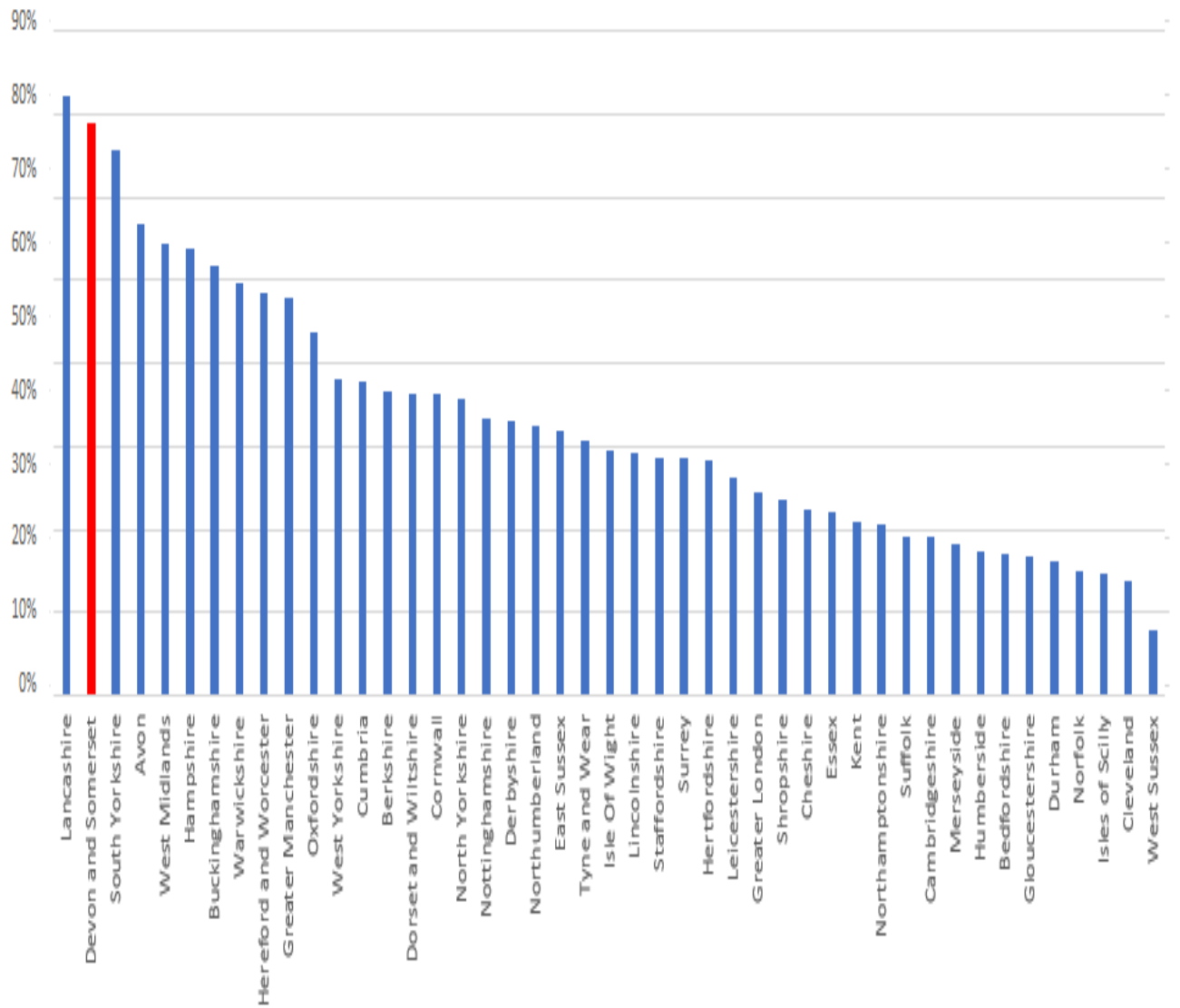
- 4.3. A proportional approach is taken (in line with the *'Better Regulators'* Code) when carrying out inspections, so in some smaller premises officers carry out simpler visits know as Fire Safety Checks, and in more complex premises a more in-depth visit known as an Audit is undertaken. The officers carrying out these checks and audits have different competency qualifications. At the end of a visit,, an outcome is issued which clearly tells people what they need to do to comply in order to keep people safe from fire.
- 4.4. The Service always tries to work with businesses to keep people safe. This is undertaken predominantly with informal letters/action plans. These give clear steps to achieve compliance without legal penalty. However, in some cases, the risk is so high that a formal notice is served, failure to comply with tthis is a criminal offense.
- 4.5. Inspection outcome action fall into one of two categories: -



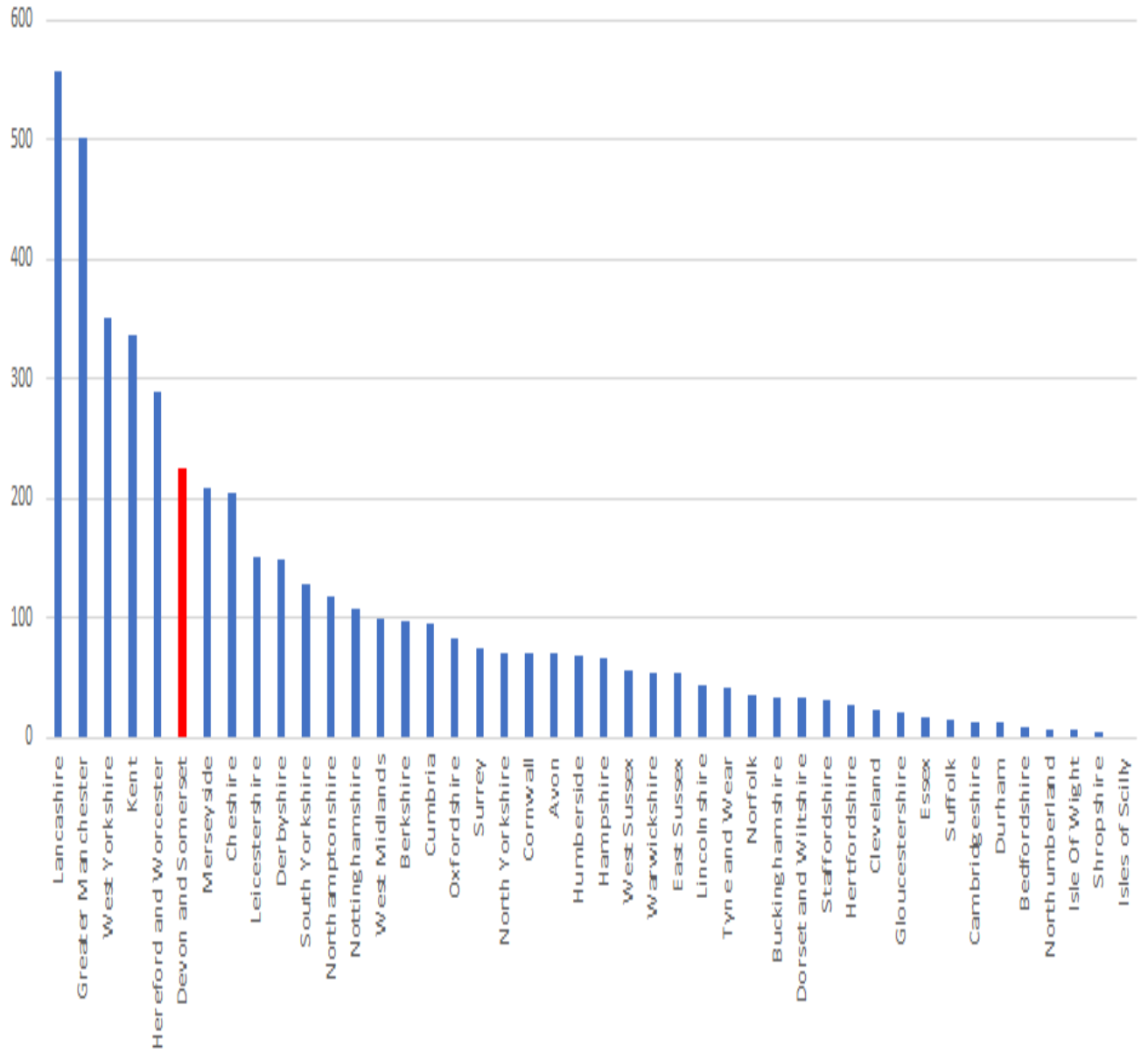
5. **HOW DSFRS INSPECTION OUTCOMES COMPARE 2016 – 2021 PERIOD**

5.1. The comparisons for inspection outcomes are shown in the following graphs:

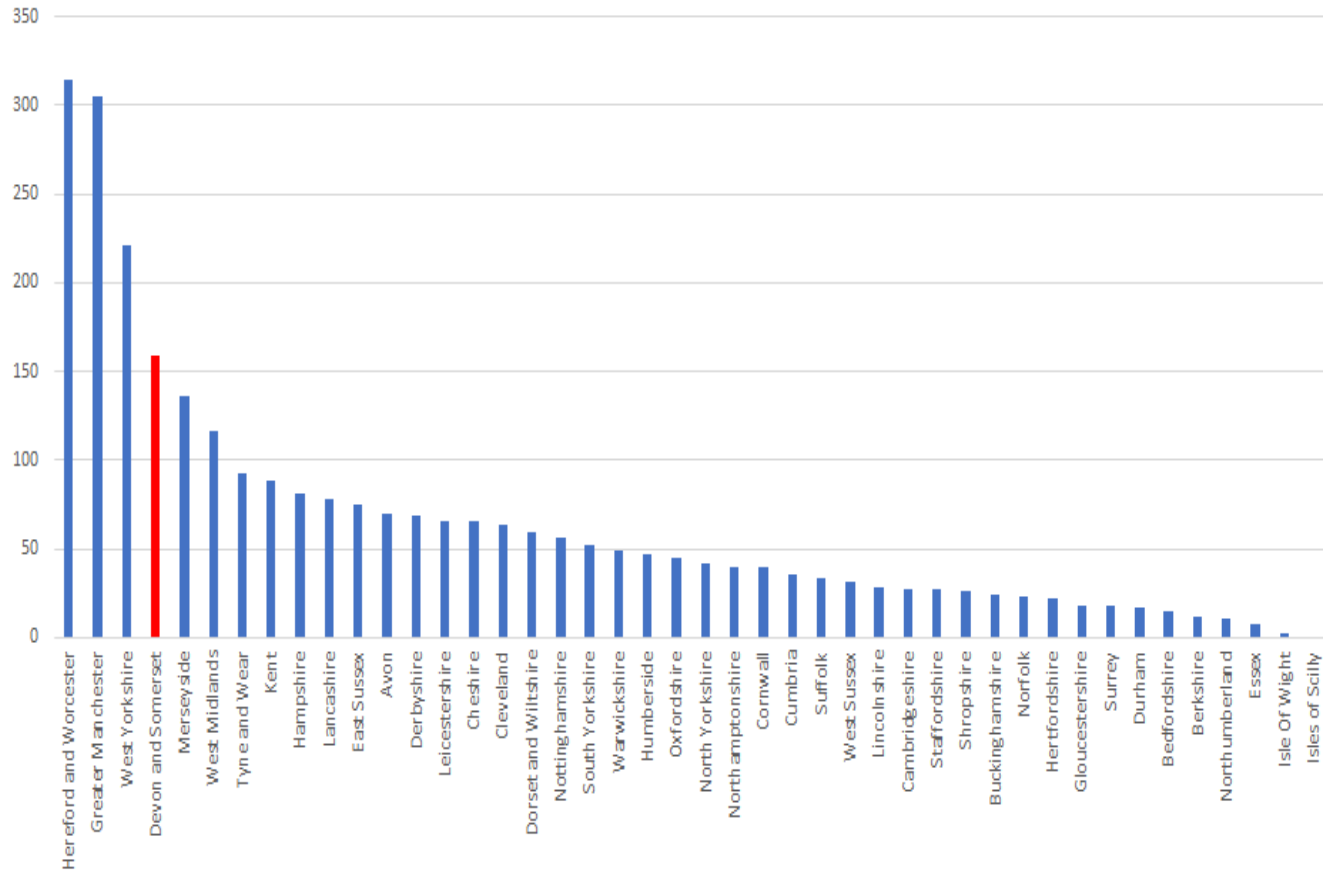
Fire Safety Audits – Unsatisfactory Outcome Percentage



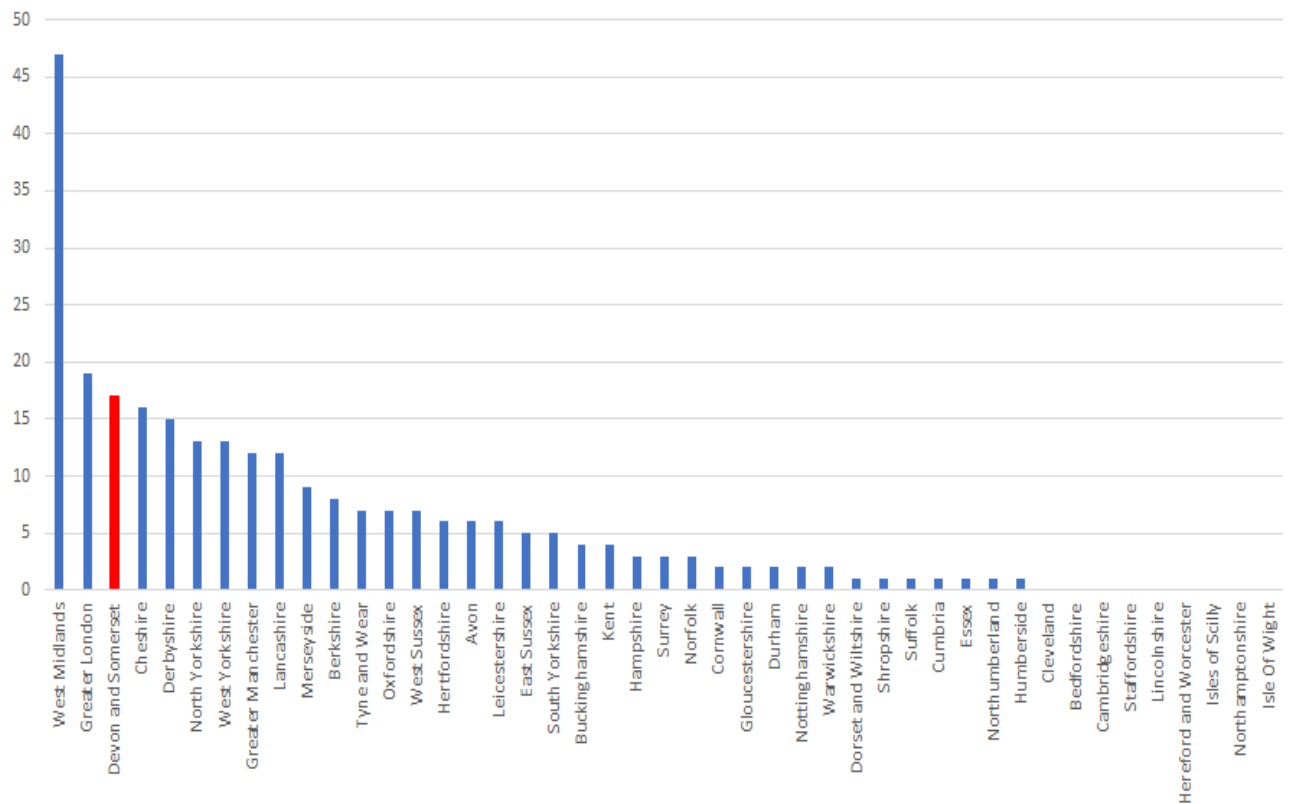
Enforcement Notices issued (excludes LFB)



Prohibitions & Restriction Notices Served (Dangerous Conditions – Consider Legal Action)



Prosecutions



6. **LEGAL ACTION – PROSECUTIONS**

6.1. Key examples where prosecutions are considered: -

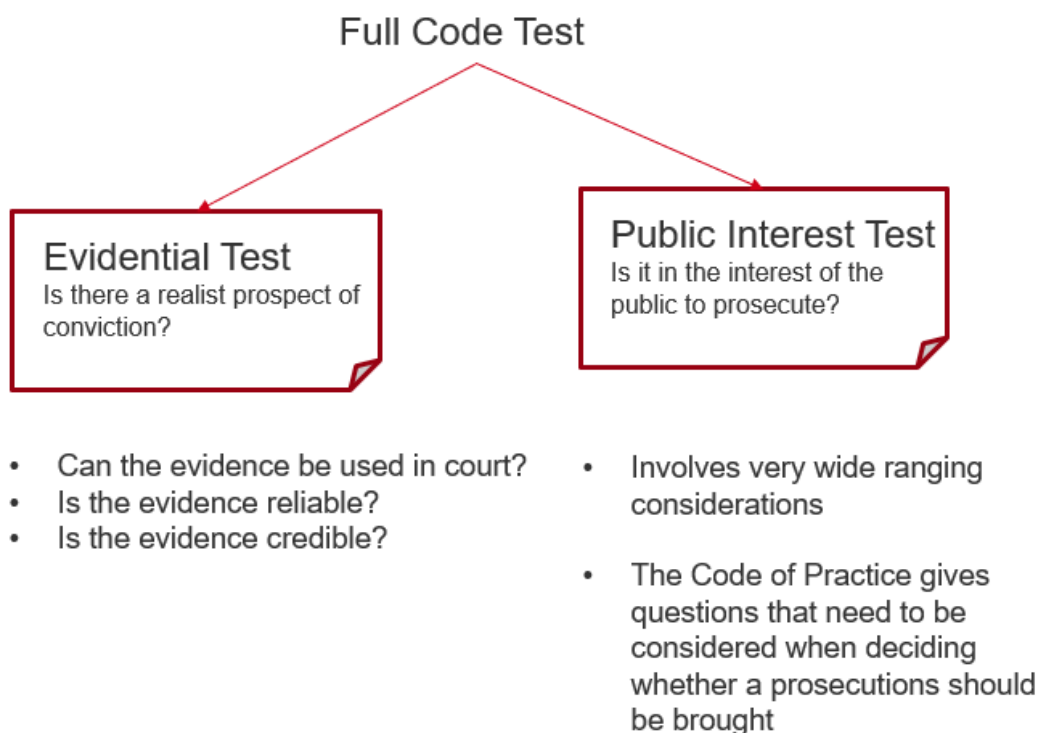
- people have been put at risk of death or serious injury from fire
- failure to comply with a formal notice,

7. **INVESTIGATIONS & LEGAL ACTION CASES**

7.1. Where people have been placed at risk of death or serious injury, specialist protection and enforcement officers will carry out a full investigation including interviews under 'Caution' complying with the Police and Criminal Evidence Act (PACE).

7.2. Investigations are extremely technical and resource heavy. However, it is a critical function of being an effective regulator and holding those who would put people at risk of death or injury to account.

7.3. In the same way as the Crown Prosecution Service acts for the police, the Service will apply the Crown Prosecutors Test to confirm whether a prosecution should be brought. A prosecution may result in an unlimited fine and/or a custodial sentence. The Service also retains a Barrister with specialist knowledge of this legislative to provide advice and assistance as required.



7.4. The Service has a 100% success rate in taking legal action and is regarded as one of the leading Fire and Rescue Services in this area.

8. **KEY CHALLENGES**

- 8.1. The primary challenge is the availability of competent and qualified inspecting officers. On average it takes 3-5 years to develop a competent inspecting officer who can inspect all types of building.
- 8.2. The qualifications required by the National Fire Chief's Council's National Framework also come at a significant financial cost for both the qualification and the study time to obtain and maintain competence.
- 8.3. In addition to fire safety sector competence, those officers able to carry out legal action prosecutions will also hold a BTECH Level 7 Advanced Professional Certificate in Legal Skills in Investigation (APCIL).
- 8.4. Examples of fire safety prosecutions undertaken in 2022 are set out at Appendix A of this report for reference.

9. **CONCLUSION**

- 9.1. Enforcement action is necessary to maintain a high standard of fire safety in businesses such as hotels, care homes, leased accommodation and other property types. As the enforcing body, the Service has a responsibility to take proportionate enforcement action. This action is always weighed up against the public interest. Our teams, where possible, try to educate and assist in the first instance unless the breach is so serious, or the responsible person continues to ignore the risk despite being given reasonable time to comply with the legislation.
- 9.2. The Service's website provides guidance for business owners and responsible persons to assist in compliance. This along with the fire safety helpdesk and compliance events helps the majority of businesses to stay safe, legal and compliant with fire safety law.

GERALD TAYLOR
Director of Service Delivery

Examples- Prosecutions cases-2022

A Dawlish Property management agent fined £10,000.

Officers raised concerns with a property management agent in Dawlish, relating to a property used for commercial purposes with a rented flat above. Unsafe practices were identified such as a lack of suitable means of escape in case of fire, structural failures and the absence of a fire risk assessment.

The officers took the decision that the premises were dangerous to the person who lived in the flat, and with immediate effect, they couldn't stay there anymore. This was because if a fire were to occur on the ground floor the person in the flat above would not be able to make their escape safely. The person in the flat was also considered to be vulnerable as they were elderly with additional disabilities.

Following the investigation, the fire service made the decision to take the property agent to court. The Service determined that the conditions found at the premises in 2021 were so far below an acceptable standard that they had put people at risk of death or serious injury in the event of a fire occurring.

The investigation found that the property manager had known that the premises did not have adequate means of escape in case of fire from a previous inspection. Despite being told what was required to make the property safe he had never made an application for the works. Despite this, he continued to take rent from a vulnerable person for a number of years despite knowing that the flat was unsafe to occupy.

Company director fined £12800 + costs following Torquay flat fire

A fire broke out in a four-storey property comprising of separate leased flats.

On our arrival, crews discovered a fire on the first floor and the Service was informed that people may still be inside. Firefighters tackled the blaze and searched for missing people. Smoke and debris from the fire entered the stairway, that was the means of escape in case of fire. The crew dealt with a fire in the kitchen and supported one occupant to escape. The occupant required oxygen therapy due to smoke inhalation.

At the scene, the firefighters noted that despite a large amount of smoke, the fire alarm never sounded. Also, the door to the flat was not fitted with any type of self-closing device which would have prevented the rapid spread of the fire and smoke.

Following a successful prosecution, in summing up, Judge Linford said:

“No basic steps have been taken to ensure that the occupants would be reasonably safe in the event of a fire. There was no testing of the fire alarm, emergency lighting and no fire risk assessment had been done”.

“There was scant regard paid to anything that was needed. If this fire had happened at night, then there would likely have been fatalities”.

The director knew that he was not able to manage the fire safety but did nothing. It was not the responsibility of the leaseholders to make the premises safe, it was the company director's”.