

## Fee for Intervention - is it last year's trend?

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**CATEGORY:**  
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The FFI costs recovery regime, which has been in place since October 2012, has imposed a duty on the HSE to recover its costs for carrying out its regulatory functions against those found to be in material breach of the health and safety laws. A material breach occurs when, in the opinion of the HSE inspector, there has been a contravention of the health and safety law by a business which requires the HSE to issue a written notification to it.

When introducing FFI, the government set out the three main reasons for introducing the regime as being: (a) to reduce public expense, (b) to encourage companies to comply with the law and put faults right swiftly and (c) to discourage companies from undercutting competitors and putting their employees and the public at risk. The government projections estimated that the introduction of the FFI regime would result in the HSE eventually recovering approximately £37 million per year. A Freedom of Information Act request in November 2013 revealed that in its first year of operation the HSE had raised just over £5.5 million from the scheme.

The Triennial Review Report published by the Health and Safety Executive in early 2014 has indicated that the prevalent mood with the relevant stakeholders was that the FFI regime was having an adverse effect on the HSE's reputation for impartiality and integrity.

In particular, it is reported that many stakeholders believe that as a result of the regime's introduction the HSE is essentially acting as the 'police, prosecutor, judge and jury' in health and safety investigations. In addition, some feel that the FFI was introduced as a way for the HSE to compensate for the reduction in government funding, while others believe that the subjective nature of the test regarding applicability of FFI does not offer sufficient certainty or objectivity. The general feeling appears to be that the issues with FFI, some of which are highlighted above, are damaging the previously constructive relationships between the HSE and businesses and has changed the way the HSE is being viewed.

The Report accepts that the FFI is a significant part of the HSE's business model and its potential withdrawal would have a significant impact on its finances. However, it also acknowledges that the concerns discussed above are important and need to be addressed at the upcoming FFI review.

The Report recommends that the link between fines and HSE funding be removed, or the benefits be shown to clearly outweigh the detrimental effects, failing which the FFI should be phased out. The Report also considers that as an interim, urgent measure, at least one independent person should be involved at the first formal stage in FFI appeals to ensure that the process is viewed as independent and impartial.