



Rossendale Borough Council Enforcement Policy

1. POLICY STATEMENT

- 1.1. Rossendale Borough Council (the Council) aims to secure a safe and healthy environment for everyone living, working or visiting Rossendale. This will be achieved through a combination of education, provision of advice, investigation of issues raised by customers and regulating the activities of others. Securing compliance with legal regulatory requirements using enforcement powers including prosecution, is an important part of achieving this aim.
- 1.2. The Council carries out a wide range of legal duties under various Acts and regulations. This Policy outlines the approach we take when considering enforcement action and applies to a variety of functions, including:
 - Food Safety and Health and Safety, including infectious disease
 - Licensing, including Public Entertainment Licensing
 - Building Control
 - Development Control
 - Pest Control and Dog Warden Services
 - Environmental Protection including Noise, Land and Air Pollution
 - Private Sector Housing standards
 - Clean Neighbourhoods and Environment

2. STATEMENT OF OBJECTIVES

- 2.1. The Council's policy is to secure a safe and healthy environment for everyone living, working or visiting Rossendale. This policy sets out the general principles, which the Council intends to follow in relation to enforcement and prosecution, and commits the Council to fair and consistent enforcement of practices and procedures.
- 2.2. Rossendale Borough Council signed up to the Enforcement Concordat on 3rd April 2001. The Concordat sets out what businesses and others being regulated can expect from enforcement officers and commits us to good enforcement policies and procedures. This policy has been written with regard to the principles and contents of the Government's Enforcement Concordat.
- 2.3. The Council fully acknowledges and endorses the rights of individuals and will ensure that all enforcement action occurs in strict accordance with the Police and Criminal Evidence Act 1984 (as amended), Human Rights Act 1998, the

Regulation of Investigatory Powers Act 2000, and other relevant legislation and guidance.

- 2.4. This policy takes into account the guidance set out in “The Code for Crown Prosecutors” (November 2004) published by the Crown Prosecution Service.
- 2.5. Enforcement action, whether that be verbal or written warnings, statutory notices, formal cautions or prosecution, is based upon an assessment of risk in relation to the issue requiring control.
- 2.6. Where specific guidance on enforcement action exists this will be followed. For example, statutory guidance, other relevant guidance and codes, and codes of practice issued by professional organisations and bodies will be followed.
- 2.7. The Council recognises the need to provide for particular interests of consumers within the Borough, including business owners, professionals, employees and the public, to ensure that all legislation is enforced fairly. Provision is made to visit businesses outside normal office hours, but at times when the business is available. Some translated advisory leaflets are available and interpreting facilities are available through ‘Language Line’, where the stakeholder has difficulty in understanding English.
- 2.8. All authorised officers will abide by this policy. Any departure from this policy must be justified and fully considered by management before a decision is made.
- 2.9. The implementation and effectiveness of the policy will be monitored and reported on, and any variation addressed, within the relevant service plan.

3. PURPOSE

- 3.1. The purpose of enforcement is to ensure that preventative or remedial action is taken to protect public health and the environment by securing compliance with regulatory systems. Whilst the Council seeks to ensure full voluntary compliance with relevant legislative requirements wherever possible, it will not hesitate to use its enforcement powers where necessary.

4. SHARED ENFORCEMENT ROLES

- 4.1. Legislation to protect the public is enforced by various agencies. We work with other agencies, central government, other Local Authorities and other Regulators to ensure coherent regulation. We also work in partnership with voluntary groups and non-governmental organisations to achieve common goals, where appropriate.
- 4.2. Where there are shared enforcement roles e.g. Health and Safety Executive, The Environment Agency, Trading Standards, Lancashire Fire and Rescue Service and Lancashire Constabulary, officers will notify the relevant enforcement agency of a contravention for which that agency is responsible.

WORKING WITH OTHER REGULATORS

- 4.3. Where the Council and another enforcement body both have the power of enforcement, we will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence.

5. AUTHORISATION OF STAFF

- 5.1 The Council's constitution and scheme of delegation describes how the responsibility for enforcement is allocated and how staff are authorised to undertake duties on behalf of the Council.

6. PRINCIPLES OF ENFORCEMENT

- 6.1. **The Council believes in firm but fair regulation.** Underlying the policy of firm but fair regulation are the principles of; **proportionality** in applying the law and securing compliance; **consistency** of approach; **transparency** about how the Council operates and what those regulated may expect from the Council; and **targeting** of enforcement action.

PROPORTIONALITY

- 6.2. Proportionality is about minimising the cost of compliance by ensuring any action we require is proportionate to the risks. Those whom the law protects and those on whom it places legal duties can expect that action taken by the Council to achieve compliance should be proportionate to the risk posed to public health and safety, the environment and to the seriousness of the breach of the law.

CONSISTENCY

- 6.3. Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency when: offering advice; issuing statutory notices; deciding to prosecute; and, responding to requests for service. Appendices to this Policy explain how this is interpreted in relation to each function within each Council service.
- 6.4. The Council recognises that consistency does not mean uniformity. Officers will need to take account of many variables when making decisions including: the seriousness of the breach; history of previous breaches and the attitude of the offender. While Officers will be expected to exercise judgement in individual cases, we will continue to develop systems to promote consistency including arrangements for effective liaison with other enforcing bodies.

TRANSPARENCY

- 6.5. Transparency means helping those who are regulated and other individuals to understand what is expected of them and what they should expect from the

enforcing authorities. It also means making clear to those who are regulated, and other individuals, not only what they have to do, but where relevant, what they don't have to do. That involves distinguishing between statutory requirements and advice/guidance, i.e. about what is desirable, but not compulsory. It also means making clear why an officer intends to take, or has taken, enforcement action.

TARGETING

- 6.6. Targeting means ensuring that enforcement is targeted primarily on those whose activities give rise to the most serious risks, or where the hazards are least well controlled/managed. Action will be primarily focused on duty holders who are responsible for the risk and are best placed to control it.

OBJECTIVITY

- 6.7 The Council will ensure that decisions are not influenced by the gender, ethnic origin, religious or political beliefs or sexual preferences of the offender, victim or witness. Sensitive consideration will be given where persons involved have a significant mental or physical disability, are children, or are elderly.

7. ENFORCEMENT OPTIONS

- 7.1 Enforcement officers must seek to secure compliance with the law. The following applies to all Officers dealings with duty holders or other stakeholders, whether formal or informal, in ensuring compliance.
- 7.2 In most cases compliance is achieved using informal action. We believe the first step in enforcement is to help prevent contravention of the law by raising awareness and promoting good practice. Methods of achieving this include: offering advice, information, guidance and support, both verbally and in the written form.
- 7.3. Formal enforcement mechanisms are also available, as set out in the law, these include:
- Issuing of statutory notices to remedy a legal contravention or prohibition, where there is a risk of injury to health, serious personal injury, or damage to the environment ;
 - Withdrawal of approvals;
 - Revocation of authorisations or permits;
 - Refusal of registration, variations to licences or conditions; or,
 - Prosecution
 - Simple Caution
- 7.4. The Council is committed to protecting the public, the environment and groups such as consumers and workers. It is also committed to making enforcement decisions which are consistent and ensuring that businesses and individuals are treated in a fair, transparent and proportionate manner.

7.5. The Council will consider the following when deciding whether or not to prosecute:

- The seriousness and effect of the offence;
- The previous history of the party concerned;
- Confidence in management;
- The intent and attitude of the offender;
- The willingness of the alleged offender to prevent a recurrence;
- The consequence of non-compliance;
- The deterrent effect of a prosecution, on offenders and others
- Whether there is enough evidence to prove the offence; and,
- Whether other enforcement options would be more appropriate.

7.6. The factors are not exhaustive and will depend on the particular circumstances of each case. Each case is unique and must be considered on its own merits. There are, however, general principles that apply in the way each situation must be approached.

7.7. Where enforcement is felt to be appropriate, then the Council has the following options available:

- Take no action;
- Take informal action;
- Issue a statutory notice;
- Issue a Simple Caution;
- Use seizure powers;
- Revoke a licence, approval or authorisation;
- Refuse a registration, licence, approval, permit or authorisation;
- Carry out work in default;
- Prohibition notice
- Seek an injunction;
- Issue a Fixed Penalty Notice
- Prosecute.

7.8. Should the Council decide on enforcement action, which goes against the advice of the Home, Lead or originating authority, then Officers will discuss the action with the relevant authority before taking any action.

8. LEVELS OF ENFORCEMENT ACTION

8.1. The following paragraphs detail the enforcement actions available and circumstances where they would be applied.

TAKE NO ACTION

8.2. Following investigation, if the situation is found to be largely satisfactory, then no further action would be taken. The business or individual concerned would be informed of this, as would the complainant, where applicable.

INFORMAL ACTION

- 8.3. Informal action to secure compliance with legislation includes: offering advice, verbal warnings and requests for action, letters and the issue of technical inspection reports, including those generated on the premises following an inspection.
- 8.4 Informal action will be considered where:
- The act or omission is not serious; and
 - Confidence in the management is high; and
 - The past history demonstrates that informal action would achieve compliance; and
 - The consequences of non-compliance do not pose a significant risk to public health, safety, or welfare; or
 - Where a business is operated by a voluntary or charitable organisation using volunteers, informal action will always be considered as the first option.
- 8.5. When taking informal action Officers will clearly differentiate between legal requirements and recommendations of good practice. This includes the provision of oral advice.
- 8.6 Where letters or other reports are sent to a business or individual these will:
- Clearly specify what work is required and why,
 - Indicate legislation which is being or is likely to be contravened and methods of compliance, including alternatives that may achieve the same effect
 - Clearly indicate recommendations of good practice, as distinct from legal requirements;
 - Detail time scales to achieve compliance.

STATUTORY NOTICES

- 8.7 Statutory notices will be considered where one or more of the following criteria apply:
- There is a specific legal requirement to serve a notice;
 - There are significant contraventions of legislation;
 - There is a lack of confidence in the recipient to respond positively to an informal approach;
 - There is a history of non-compliance with informal action;
 - Standards are generally poor with little management awareness of statutory requirements;
 - The consequence of non-compliance could be potentially serious to public health, safety or welfare and,
 - Although it is intended to prosecute, effective action also needs to be taken to remedy conditions that are serious or deteriorating.

Notices will be served for matters where there is a risk to public health, safety, or the environment and not for minor technical contraventions.

- 8.8. Notices will be in the prescribed form where this has been specified.
- 8.9. The notice will explain the contraventions (i.e. what is wrong), what is required to put things right and what the likely consequences are if the notice is not complied with.
- 8.10. The time limit on notices will be realistic and recipients of notices will be given the opportunity, should they wish, to discuss the requirements. Alternative ways of complying with the notice will be considered.
- 8.11. Compliance with the requirements of all notices will be checked as soon as is practicable after expiry.
- 8.12. Failure to comply with a statutory notice will, in general, result in prosecution and/or work in default. Officers must have sufficient evidence to justify service of a statutory notice, and be prepared to pursue non-compliance through the courts.
- 8.13. Where a formal notice is served the method of appealing against the notice and the time scale for doing so will be provided in writing at the same time.

SIMPLE CAUTION

- 8.14. The issue of a Simple Caution will be considered as an alternative to prosecution in accordance with the Home Office Circular 30/2005.
- 8.15. Where there is a criminal offence, but the public interest does not require a prosecution, a Simple Caution may be an appropriate course of action. Home Office Circular 30/2005 states that the purpose of a Simple Caution is to:
 - To deal quickly and simply with less serious offenders;
 - To divert offenders where appropriate from appearing in the criminal courts; and
 - To reduce the chances of them re-offending
- 8.16. Simple Cautions will be used in accordance with the Home Office Circular and relevant official guidance. Before administering a caution the following conditions must be satisfied:
 - There must be evidence of guilt, sufficient to give a realistic prospect of conviction if the case were to be taken to prosecution;
 - The offender must understand the significance of the formal caution and consent to it; and,
 - The suspected offender must make a clear and reliable admission of the offence.

- 8.17. The decision to refer matters to the Head of Legal and Democratic Services for Simple Caution will be taken by the Head of Service or Service Manager who will consider all relevant evidence and information.
- 8.18 Alternative enforcement action will be considered by the Head of Service or Service Manager, where the offer of a Simple Caution is refused. Again all evidence and information will be considered.
- 8.19 In most cases, but not necessarily all, refusal of a Simple Caution will result in a referral for prosecution.
- 8.20 A Simple Caution is a serious matter, which will influence any future decision should the company or individual offend again. It can be referred to in any subsequent court proceedings, but this will not apply if the caution was issued more than three years before.
- 8.21 Home, Lead and Originating Authorities will be notified of formal action. The details of Simple Cautions must be forwarded to the Central Register of Convictions, operated by the Office of Fair Trading, together with a copy of the countersigned letter accepting the caution.

SEIZURE POWERS

- 8.22 Enforcement Officers may use appropriate statutory powers to take possession of and detain articles, substances or equipment where:
- There are reasonable grounds for suspecting that the article, substance or equipment is a cause of imminent danger, serious personal injury or pollution of the environment; or,
 - Food is suspected to fail to meet the requirements of the relevant food safety legislation; or,
 - To secure the abatement of a statutory nuisance.

PROHIBITION

- 8.23 Prohibition notices will only be considered where:
- The consequence of not taking immediate and decisive action to protect public health, safety and the environment would be unacceptable;
 - An imminent risk of injury or to health or to the environment can be conclusively demonstrated;
 - The requirements of the relevant statutory guidance criteria regarding the use of such notices are fulfilled;
 - There is no confidence in the integrity of an unprompted offer made voluntarily;
 - A proprietor is unwilling to confirm in writing his/her unprompted offer of voluntary prohibition.

- 8.24 Officers authorised to issue prohibition notices will be suitably qualified and suitably experienced, as described in the relevant statutory official guidance and in-house procedures.

REFUSAL/REVOCAION OF A REGISTRATION, LICENCE, APPROVAL, PERMIT OR AUTHORISATION

- 8.25 Registrations, licences, prior approvals, permits and authorisations will only be refused or revoked, by the Council, in line with appropriate procedures and consideration of all relevant evidence. In order to take this step the individual or organisation must meet one or more of the following criteria:
- a) engage in fraudulent activity
 - b) deliberately or persistently breach legal obligations
 - c) deliberately or persistently ignore written warnings or formal notices
 - d) endanger, to a serious degree, the health, safety or well being of people, animals or the environment
 - e) failure to pay subsistence fees.

WORK IN DEFAULT AND RECOVERY OF COSTS

- 8.26 Where work is required in the interest of public health, safety or the environment and the statutory notice allows, it may be carried out by or on behalf of the Council and the cost recovered from the business, organisation or individual as appropriate, including an oncost to cover administration.

INJUNCTION

- 8.27 In exceptional circumstances where action under the relevant legislation is deemed unlikely to be effective or where there is a serious imminent risk to public health or the environment, and immediate action is considered necessary, injunctive proceedings may be considered.

FIXED PENALTY NOTICE

- 8.28 Enforcement action through fixed penalty notices will be taken against persons in circumstances permitted by specific legislation.
- 8.29 The intention of a fixed penalty notice is to avoid the need for Court action, though the option of formal caution or prosecution is available where the offence warrants such action or in the event of non-compliance with the notice.
- 8.30 If a fixed penalty is not paid within the prescribed period, legal proceedings shall be instituted.

PROSECUTION

- 8.31 The Council recognises that the decision to prosecute an individual is a serious step with implications for all involved – victims, witnesses and defendants. Circumstances where prosecution is considered appropriate are:

- Where there has been a serious breach of the law or blatant disregard for the law;
- Where there is a refusal to achieve basic minimum legal requirements, and
- Following previous contact with the Authority;

8.32 Circumstances which warrant prosecution, include:

- Where the offence involves the failure to comply in whole or in part with the requirements of a statutory notice; or
- Where the offence involves a serious or flagrant breach of the law, such that it places public health, safety or well being at risk; or
- Where the offender has been given reasonable opportunity to comply with legal requirements and where the offence involves a failure to correct an identified serious potential risk; or
- Where there has been a history of similar offences; or
- Obstruction or assault of an authorised officer; or
- Legal action shall be taken on the first occasion that certain events are witnessed because of the extreme improbability that the person once seen committing an offence would be seen on a subsequent occasion. Community benefit would also be indicated by the importance of the case, for example, whether it might establish a legal precedent.

8.33 The Officer and their line manager will consider all relevant information and evidence, when circumstances have been identified which may warrant prosecution, in order that a fair, consistent and objective decision be made, which is in line with relevant Council Policy.

8.34 Before a prosecution proceeds, the Officer shall refer to the Code for Crown Prosecutors which requires two stages to govern the Full Code Test decision-making process:- the Evidential Stage and the Public Interest Stage. The Threshold Test is not appropriate as the Department has no powers of arrest.

The *Evidential Stage* requires that the prosecutor be satisfied that there is enough evidence to provide a “realistic prospect of conviction” against each defendant on each charge. The defence case must be considered and how this is likely to affect the prosecution case. The prosecutor must consider whether the evidence can be used and is reliable.

The *Public Interest Stage* follows the Evidential stage. A prosecution will then usually take place unless there are public interest factors tending against prosecution that clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. These alternatives are illustrated in Section 8 of the CPS Code for Crown Prosecutors.

8.35 When deciding whether or not to prosecute, certain factors will be taken into consideration.

a) A prosecution is likely to be needed if:-

- a conviction is likely to result in a significant sentence
- a conviction is likely to result in a confiscation or other Order
- a weapon or violence was used or threatened
- the offence was committed against a member of the enforcement staff
- the defendant was in a position of authority or trust
- evidence shows that the defendant was a ringleader or organiser of the offence
- there is evidence that the offence was premeditated
- there is evidence that the offence was carried out by a group
- the victim was vulnerable, had been put in fear or suffered personal attack, damage or disturbance
- the offence was committed in the presence, or in close proximity to, a child
- the offence was motivated by any form of discrimination
- there is a marked difference between the actual or mental ages of the defendant and the victim
- the defendant's previous convictions or cautions are relevant
- the defendant is alleged to have committed the offence while under an order of the court
- there is a likelihood of continued offences
- the offence, although not serious in itself, is widespread in the area where it was committed
- a prosecution would have a significant positive impact on maintaining community confidence.

b) A prosecution is less likely to be needed if:-

- The court is likely to impose a nominal penalty
- The defendant has already been sentenced and further conviction would not increase that sentence
- The offence was committed as a result of a genuine mistake or misunderstanding
- The loss or harm can be described as minor, or a single incident
- There has been a long delay between the offence taking place and the date of the trial, unless;
 - i. the offence is serious
 - ii. the delay has been caused in part by the defendant
 - iii. the offence has only recently come to light, or
 - iv. the complexity of the offence has meant that there has been a long investigation.

8.36 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The prosecutor must decide how important each factor is in the circumstances of each case and go on to make an overall assessment. Once a decision has been made to prosecute then action should be taken without undue delay.

- 8.37 When implementing legal proceedings, the requirements of the Police and Criminal Evidence Act 1984 (As Amended) - Codes of Practice and the Criminal Procedures and Investigation Act 1996 - Codes of Practice, will be adhered to.
- 8.38 Charges will be selected which:-
- a) reflect the seriousness and extent of the offending
 - b) give the court adequate powers to sentence and impose Orders
 - c) enable the case to be presented in a clear and simple way.

9. SUMMARY

- 9.1. This guidance document outlines the policy of Rossendale Borough Council. Its emphasis is that enforcement is based primarily on risk.
- 9.2. Officers should follow this guidance in relation to enforcement of the law and make reference to the relevant documents as quoted in the policy.