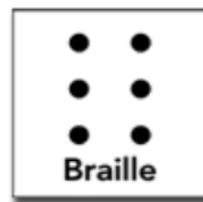
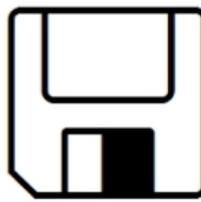
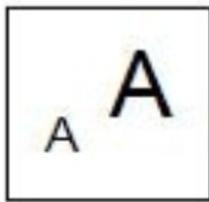


ENFORCEMENT POLICY AND STRATEGY DRAFT 2009 - 2010



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Appendices

A – Service specific enforcement summaries – to be developed.

B – Legal Proceedings Procedure and forms – index to be added

C – Enforcement support documents – index to be added

1.0 BACKGROUND

1.1 The Council carries out a wide range of legal duties under various Acts and regulations. This Strategy and Policy outlines the approach we take when considering and carry out enforcement action and applies to a variety of functions, including:

- Food Safety including infectious disease
- Health and Safety
- Licensing, including alcohol licensing, gambling and charitable collections,
- 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
- Revenues, Benefits and Fraud Services

1.2 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.

1.3 “Enforcement” includes inspection, investigation, intelligence and education and promotion activities. Inspection includes the proactive review of premises, practices or activities to determine levels of compliance with legislation. Investigation includes reactive activities to determine whether unsatisfactory situations exist where formal action is required. Intelligence covers activities to monitor activities, levels of pollution, food quality etc to determine whether action is required on the basis of that evidence. Education and promotion involves the provision of information or advice on how people and organisations can comply with requirements and good practice.

1.4 Enforcement is a means for achieving Corporate Priorities and contributes to the achievement of all six priorities. Regulatory Services also make a significant contribution to Local Area Agreements and other National Indicators.

2.0 VISION OF ENFORCEMENT SERVICE

2.1 The Vision or Goal of the Enforcement Service is the establishment of an efficient and effective enforcement capability that contributes to the delivery of corporate priorities.

3.0 POLICY STATEMENT

3.1 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 regulation of the activities of others. Securing compliance with legal regulatory requirements using enforcement powers, including prosecution, is an important part of achieving this aim. In particular, Rossendale Borough Council will:-

- adhere to the recommendations of the Hampton Report by having regard to the Regulators' Compliance Code in respect of all enforcement decisions
- ensure the interests of regulated entities and consumers are taken into account in the design and delivery of enforcement services
- adhere to function-specific policies, guidance and codes of practice related to enforcement
- work with other enforcers to achieve greater effectiveness and economy
- carry out enforcement activities in a fair, consistent and transparent way
- comply with requirements on the way enforcement activity should be undertaken
- ensure enforcement staff are properly equipped, trained and supported to perform their functions.

4.0 REGULATORS' COMPLIANCE CODE

4.1 The purpose of the Compliance Code is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on business, the Third Sector and other regulated entities i.e. businesses, charities, public sector bodies, social enterprises, co-operatives and mutuals. The Code stresses the need for regulators to adopt a positive and proactive approach towards ensuring compliance by:-

- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches.

4.2 The Code contains specific obligations in relation to each of the Hampton Principles with the following headings:-

- Economic progress
- Risk assessment
- Advice and Guidance
- Inspections and other visits
- Information requirements
- Compliance and enforcement actions
- Accountability

4.3 The List Order, which came into force on 6th April 2008, identified those items of legislation to which this Code applies. As far as Rossendale is concerned, it applies to the following services:-

- Animal welfare e.g. pet animals

- Anti-social behaviour
- Entertainment
- Environment
- Food safety
- Housing standards
- Licensing
- Public health e.g. Clean Air, Health & Safety, Public Health

The existing voluntary Enforcement Concordat has been replaced by this Code, but the Concordat still applies to remaining regulatory functions e.g. planning and building control, benefits and fraud. The Enforcement Concordat was introduced by the Government in 1998 and encouraged Authorities to comply with voluntary principles similar to those contained within the Regulators' Compliance code.

5.0 **ENFORCEMENT STRATEGIC OBJECTIVES**

By the end of March 2010, Rossendale Borough Council will aim:-

- 5.1 To establish a high level of satisfaction with the Council as a reliable source of information, advice and guidance (including NI 182)
- 5.2 To review and produce an annual summary of the contributions that enforcement has made to the delivery of corporate priorities
- 5.3 To establish a comprehensive documented system for the administration of legal proceedings
- 5.4 To establish a monitoring system to record the level of compliance with the Enforcement Policy
- 5.5 To provide and maintain safe working conditions for enforcement staff
- 5.6 To establish mechanisms for the involvement of stakeholders in the design and delivery of enforcement services
- 5.7 To demonstrate how enforcement activities have been targeted at areas of greatest risk
- 5.8 To establish a comprehensive portfolio of enforcement services consistent with the principles of the Macrory Review
- 5.9 To commit to the participation in a Regulatory Service Peer Challenge Process and implement any resulting Improvement Plan
- 5.10 To ensure that all enforcement activity is undertaken in compliance with legal powers and duties.

5.11 To ensure we have a Corporate approach to carrying out our enforcement responsibilities including but not limited to our approach to risk/evidence/cautioning/lone working/prosecution/education.

6.0 ENFORCEMENT OPTIONS

6.1 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.

6.2 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.

6.3 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

6.4 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.

6.5 The Council will consider the following factors 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.

6.6 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.

6.7 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.

6.8 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.

7.0 LEVELS OF ENFORCEMENT ACTION

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

TAKE NO ACTION

7.2 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

7.3 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.

7.4 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.

7.5 When taking informal action Officers will clearly differentiate between legal requirements and recommendations of good practice. This includes the provision of oral advice.

7.6 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

7.7 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.

7.8 Notices will be in the prescribed form where this has been specified.

7.9 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.

7.10 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.

7.11 Compliance with the requirements of all notices will be checked as soon as is practicable after expiry.

7.12 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. Work in default will be undertaken where there is a continuing need for the works to be carried out. Not all statutory notices can be followed by work in default.

- 7.13 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

- 7.14 The issue of a Simple Caution will be considered as an alternative to prosecution in accordance with the Home Office Circular 30/2005.

- 7.15 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

- 7.16 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.

- 7.17 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.

- 7.18 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.

- 7.19 In most cases, but not necessarily all, refusal of a Simple Caution will result in a referral for prosecution.

- 7.20 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.

- 7.21 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

- 7.22 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

- 7.23 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.
- 7.24 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

- 7.25 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 following criteria should be considered in relation to the individual or organisation who :

- a) engages in fraudulent activity
- b) deliberately or persistently breaches legal obligations
- c) deliberately or persistently ignores written warnings or formal notices

- d) endangers, to a serious degree, the health, safety or well being of people, animals or the environment
- e) fails to pay subsistence fees
- f) any other grounds which indicate the person is not deemed to be a fit and proper person e.g. for the purposes of licensing.

WORK IN DEFAULT AND RECOVERY OF COSTS

- 7.26 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

- 7.27 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

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

8.0 LEGAL PROCEEDINGS

- 8.1 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;
- 8.2 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.

8.3 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.

8.4 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 Council 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.

8.5 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.

8.6 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.

8.7 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.

8.8 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.

9.0 LEGAL PROCEEDINGS PROCESS

- 9.1 In order to ensure that legal proceedings are administered in a consistent and timely fashion, and to the required level of quality, a documented procedure will be used to manage the process. This will deal with all aspects of routine cases including preparation of prosecution files, dealing with cases in progress, completion of documentation after the case has been completed and dealing with abandoned or withdrawn cases and appeals.
- 9.2 In order to aid consistency, a set of forms have been designed to record and present information in a consistent fashion. These are indexed in the Appendix.

10.0 STAFF AUTHORISATION AND DELEGATION

- 10.1 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.

11.0 STAFF SUPPORT

- 11.1 Staff involved in enforcement are assured of their safety and welfare by means of implementation of policies, strategies and the provision of guidance and training. In particular, as enforcement activity is generally carried out by staff working alone, policies and practices have been adopted to secure their safety while out of the office. These include:-
- The Lone Worker Policy and Procedure, which provides a system for ensuring that contact is maintained with staff while they are working out of the office.
 - An Out of Hours Lone Working Procedure provides a framework for keeping in contact and emergency support for staff working outside normal working hours, at weekends and on bank holidays.
 - Training needs are assessed on an annual basis and training is made available for staff in relation to issues such as dealing with aggression and de-escalation of confrontational situations.
 - The Corporate Enforcement Group has been established and ensures that staff have sufficient equipment and materials to deliver enforcement services.
 - Staff are provided with suitable identification documents and their authority to undertake enforcement activity is confirmed through administrative procedures linked to the Council's Constitution.
 - The Council has adopted an Unreasonably persistent complainant and unreasonable complainant behaviour policy based on guidance produced by the Local Government Ombudsman.

12.0 ENSURING FAIR AND EQUAL ENFORCEMENT

- 12.1 Policies and advice, produced within the Council, ensure that enforcement activity is undertaken in a professional and respectful way. Practices include:-

- Criminal Records Bureau checks are undertaken in respect of all staff that work with or come into contact with children and vulnerable adults.
- The Council's Equalities Strategy ensures that enforcement activity is delivered in such a way that stresses the importance of fair treatment and equal access to our services.
- Equality Impact Assessments are undertaken of all significant policies and strategies and these are published and are publicly available.
- The Code of Practice for carrying out surveillance under the Regulation of Investigatory Powers Act 2000 ensures that individual's rights are protected while also ensuring that law enforcement can be undertaken effectively. It ensures that covert surveillance is only used and authorised in specific circumstances and with specific controls. This would be where the collection of evidence would otherwise be jeopardised by the visibility of the officer collecting that evidence and where the matter is of significant local importance.

13.0 REVIEW, MONITORING AND REPORTING COMPLIANCE

- 13.1 Regulatory Services have come under increasing influence from central Government initiatives. These influences will be regularly assessed and this Strategy and Policy reviewed on not less than an annual basis to ensure it is up to date.
- 13.2 Monitoring of compliance with the Policy and in the implementation of the Strategy will be achieved through the Corporate Enforcement Group under the direction of the Executive Director for Business.
- 13.3 The outcome of regulatory service delivery will be reported on an annual basis to the Executive Management Team in a format agreed with the Corporate Enforcement Group.