

**Subject:** DRAFT ENFORCEMENT  
STRATEGY AND POLICY

**Status:** For Publication

**Report to:** Policy Overview and Scrutiny  
Committee

**Date:** 13<sup>th</sup> January 2009

**Report of:** Executive Director for Business

**Portfolio Holder:** Portfolio Holder for Regeneration  
**Holder:**

**Key Decision:** Yes

Forward Plan  General Exception  Special Urgency

## 1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to present a draft Enforcement Strategy, including the Enforcement Policy, for consideration by Members and for ultimate adoption by Rossendale Borough Council in relation to its regulatory services.

## 2. CORPORATE PRIORITIES

- 2.1 The matters discussed in this report impact directly on all the following corporate priorities and associated corporate objective.
- Delivering Quality Services to Customers (Customers, Improvement)
  - Delivering Regeneration across the Borough (Economy, Housing)
  - Keeping Our Borough Clean and Green (Environment)
  - Promoting Rossendale as a cracking place to live and visit (Economy)
  - Improving health and well being across the Borough (Health, Housing)
  - Well Managed Council (Improvement, Community Network)

## 3. RISK ASSESSMENT IMPLICATIONS

- 3.1 There are no specific risk issues for members to consider arising from this report.

## 4. BACKGROUND AND OPTIONS

4.1 The Council adopted an Enforcement Policy at its meeting on 21st March 2007. An update report was considered on 19<sup>th</sup> September 2007. Since that date, a considerable number of developments have occurred in relation to enforcement requiring the reconsideration of the Policy. In addition, as the Policy relates to the approach the Council would take to enforcement, this Policy is better included within an Enforcement Strategy, which would describe how the Council could use enforcement as a tool for achieving outcomes. This report identifies those developments, some of which are still ongoing, and which have been taken into consideration in the preparation of the draft Strategy.

4.2 The Corporate Manslaughter and Corporate Homicide Act 2007 can be considered in relation to sanctions for corporate bodies or individuals where they are identified as being the controlling mind regarding a fatality.

4.3 The current National enforcement priorities were set by the Rogers Review, which reported in March 2007. The Government was advised that, following an examination of 60 policy areas, the Government should specify 5 priorities for local authority trading standards and environmental health services. These are:-

- Air quality, including regulation of pollution from factories and homes
- Alcohol, entertainment and late night refreshment licensing and its enforcement
- Hygiene of businesses selling, distributing and manufacturing food and the safety and fitness of food in the premises
- Improving health in the workplace
- Fair trading (trade description, trade marking, mis-description, doorstep selling).
- (A further area, Animal and public health was added later on a time limited basis)

The LBRO will now be responsible for updating these priorities and an evaluation of current practice will be published in 2009.

4.4 The Local Authority Co-ordinators of Regulatory Services (LACORS – a part of the Local Government Association) and the Chartered Institute of Environmental Health (CIEH) have recently published a document entitled 'Collaborative Councils: Guidance on Partnership Working in Regulatory Services'. This was in recognition that Councils are increasingly developing innovative ways of working together to deliver regulatory services. The main drivers for this arrangement are service improvement and efficiency and cost savings. The Strong and Prosperous Communities White Paper (2006) encouraged greater collaboration between Councils and recognised the potential for service improvement and greater efficiencies. The Night Time Noise Service operating in East Lancashire is an example of a partnership in operation.

4.5 The Lyons Report (2007) described 'Place-shaping' as the creative use of powers and influence to promote the general well-being of a community and its citizens. Amongst several other components it includes:-

- Regulating harmful and disruptive behaviour, and
- Working to make the local economy more successful while being sensitive to pressures on the environment.

4.6 The Regulators' Compliance Code came into effect on 6<sup>th</sup> April 2008. Section 22(4) of the Legislative and Regulatory Reform Act 2006 places a duty on regulators to 'have regard' to the Code. It applies only to general level functions i.e. it does not apply in relation to individual operational level activities of inspectors. But it does apply to the way a service is designed and delivered, the policies and principles and standards intended for general application locally. Paragraph 8.4 of the Code states that regulators should publish an Enforcement Policy.

4.7 The Regulatory Enforcement and Sanctions Act 2008 (RESA) came mostly into force on 1<sup>st</sup> October 2008. This created the Local Better Regulation Office (LBRO). The LBRO are working with the Food Standards Agency, the Health & Safety Executive, the Environment Agency and the Gambling Commission to create Memoranda of Understanding with those regulators at the moment.

RESA allowed more focused sanctions with the purpose of changing the behaviour of businesses to attain long-term compliance, restoring the harm caused by any offending and removing any financial gain. This should enable us to take faster, more effective enforcement action where prosecution is not warranted but action needs to be taken to warn the business that non-compliance will not be tolerated. The LBRO will advise Ministers whether local authorities have been Hampton-compliant before they are allowed to use the new powers.

4.8 The LBRO published its strategy for 2008-2011 in October 2008. We will have to have regard to what they say in future. Their Vision is based on securing positive demonstrable differences for their stakeholder groups. They will measure their success in terms of the improvements they can envisage for businesses, communities, local authority regulatory services and national regulators. They have three objectives:-

- To support the improvement of local authority regulatory services
- To deliver consistency across council boundaries, mainly through the proposed Primary Authority Scheme
- To enhance the local regulatory system.

They will pursue these objectives through a series of linked programmes, details of which are not currently available.

4.9 The LBRO published a Local Authority Regulatory Services (LARS) Landscape on 11 November 2008. The purpose was to establish what the local authority regulatory system currently looks like. The emphasis is on the interrelationships between enforcement bodies both locally and nationally and also on the shortfall in resources allocated to enforcement activity. Enforcers are agents of change i.e. enforcement is a means of achieving an outcome and should be linked to business planning and service plans.

4.10 The LBRO conference in December 2008 was told by the Better Regulation Minister, Stephen Carter, that the pace of reform of regulatory services will be

accelerated to help businesses cope with the UK's looming recession. LA Regulatory Services need to be even more focussed on enabling local businesses to succeed. This makes the need for proportionate regulation and targeted regulation where it is needed even more important.

4.11 The Primary Authority scheme is currently published for consultation and will be implemented on 1<sup>st</sup> April 2009. This scheme involves the creation of a Primary (Local) Authority in relation to a specific business that may have multiple branches and is intended to provide a single point of contact for that business. This, it is claimed, will involve changing the way the local regulatory system operates to make it more efficient and deliver greater regulatory consistency. The consultation closes on 27<sup>th</sup> February 2009, approximately 4 weeks before it is implemented. There are many outstanding issues relating to the scheme that have been raised, therefore the full implications are as yet unknown. There are few multiple retailers operating within Rossendale so far, so we may not become a Primary Authority. However, we will have to deal with Primary Authorities elsewhere, mostly in respect of the supermarket chains, and these may make changes to the way we work in future. For example, we may need to ask for approval from a Primary Authority before being able to take certain enforcement actions.

4.12 The LBRO are working with national regulators to develop Competence Frameworks as a means of delivering better regulation. There has been a general recognition that competence grows with experience and is not reliant solely on qualifications. The Competence Frameworks form a 'stairway' building on knowledge, skills and competencies to capability and finally to competence. This is mandatory for health & safety enforcement staff under the section 18 Guidance which has already been published by the Health & Safety Executive.

4.13 Two projects are ongoing that look at the Council's role in enforcement to protect the environment. These are:-

- Implementation of the Environmental Liability Directive, and
- Defra fairer and better environmental enforcement project.

Both projects seek to tackle a perception that people who harm the environment get off too lightly, leaving taxpayers and communities to deal with the effects. The first project is mainly concerned with costs of big pollution events, where the polluter should pay for restoration. The second is looking at the whole enforcement landscape and is an example of an attempt by LBRO to define the common purpose of enforcement and a common framework of sanctions.

4.14 There is a proposal to introduce a minor variations process to the Licensing Act 2003. This would add a simpler method of variation to premises licences and club premises certificates. This is an example of a simplification proposal put forward by a regulator. Other Agencies have produced, or are in the process of producing, other examples of service simplification in response to the Better Regulation agenda. For example, the Food Standards Agency (FSA) published its latest Simplification Report and Plan for 2008/9 on 10<sup>th</sup> December 2008. This described initiatives aimed to help small businesses and improve the way the FSA works with local authorities.

- 4.15 A number of other initiatives are ongoing with other National regulators that will affect the regulatory services over the coming months.
- 4.16 Work is also ongoing that may ultimately enable local authorities to administer a conditional caution under s22-27 of the Criminal Justice Act 2003 as amended. These are intended to keep lower level offenders out of court. They also address the needs of both victims and offenders – they deal with the offenders’ behaviour quickly and allow action to be taken to rehabilitate the offender or to repair the damage caused by the offence. Local authorities could make either rehabilitation conditions or reparation conditions. Lancashire County Council Trading Standards Service has piloted this process in relation to age restricted sales courses.
- 4.17 On 16<sup>th</sup> December 2008, the Home Secretary announced that a consultation will be undertaken early in 2009 on a number of proposed changes to the Regulation of Investigatory Powers Act (RIPA) Code of Practice. Although RIPA is clearly not anti-terror legislation, there has been a level of misunderstanding about those powers in the national press. The consultation is likely to lead to:-
- A revision to the Code of Practice that comes under the Act,
  - A decision about which public authorities can use RIPA powers, and
  - Raising the bar for how those powers are authorised and who authorised their use.
- This may have implications on the way enforcement activity is undertaken in the future.
- 4.18 The Government has also announced proposals for changes to the building control system. Proposals have been made in a number of areas including the delivery of Building Regulations and guidance, modernising inspection and enforcement and providing alternative routes to compliance.
- 4.19 A Corporate Enforcement approach has been adopted at Rossendale Borough Council. This has been created to develop improved and consistent enforcement across the Council. Many staff welfare and safety programmes have been implemented that provide the necessary support for enforcement officers who invariably perform most of their services alone and outside of the office. These have been incorporated into the overall Strategy that describes how enforcement is undertaken.

**COMMENTS FROM STATUTORY OFFICERS:**

**5. SECTION 151 OFFICER**

- 5.1 Any financial implications arising from the approval of the revised Enforcement Strategy and Policy will be contained within existing budgets.

**6. MONITORING OFFICER**

- 6.1 Legal Services have been involved in the drafting of this document.

**7. HEAD OF PEOPLE AND ORGANISATIONAL DEVELOPMENT (ON BEHALF OF THE HEAD OF PAID SERVICE)**

7.1 No HR implications.

**8. CONCLUSION**

8.1 The Regulatory Services are currently being increasingly affected by national initiatives for the purpose of simplifying and targeting enforcement activity to achieve specific outcomes. The issues raised by known initiatives have been incorporated into the current Enforcement Strategy and Policy. However, as so many changes are affecting enforcement activities, the Strategy should be seen as a framework for enforcement activity with detailed implementation contained within service specific appendices. Developments in staff safety and welfare, through the development of the RBC Corporate Enforcement Group, have also been incorporated into the overall Enforcement Strategy.

**9. RECOMMENDATION(S)**

9.1 That the revised Enforcement Strategy and Policy be approved.

**10. CONSULTATION CARRIED OUT**

10.1 The components of the strategy have been discussed amongst the members of the Corporate Enforcement Team and development of service specific appendices is ongoing.

**11. EQUALITY IMPACT ASSESSMENT**

Is an Equality Impact Assessment required Yes

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**12. BIODIVERSITY IMPACT ASSESSMENT**

Is a Biodiversity Impact Assessment required No

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Background Papers	
Document	Place of Inspection
<p>Corporate Manslaughter and Corporate Homicide Act 2007. HMSO.</p> <p>Rogers Review – National Enforcement Priorities for Local Authority Regulatory Services. Cabinet Office. March 2007.</p> <p>Collaborative Councils: Guidance on Partnership Working in Regulatory Services. LACORS &amp; CIEH. 2008.</p> <p>Strong &amp; Prosperous Communities. HMSO. 2006</p> <p>Lyons Report - Place-shaping: a shared ambition for the future of local government. HM Treasury. March 2007.</p> <p>Regulators' Compliance Code. LBRO. 2008.</p> <p>Regulatory Enforcement and Sanctions Act 2008. HMSO.</p> <p>LBRO Strategy 2008-2011. October 2008.</p> <p>Local Authority Regulatory Landscape. LBRO. November 2008.</p> <p>Home Office Circular 016/2008. July 2008.</p>	<p>Environmental Health Service Stubbylee Hall Stubbylee Lane Bacup OL13 0DE</p>