ENVIRONMENTAL HEALTH

ENFORCEMENT POLICY

May 2009
ROther District Council

Environmental Health Enforcement Policy

A. Introduction
1. This document details the Rother District Council’s policy on Environmental Health Law Enforcement, including prosecution. It was approved by the Council in October 2001 (minute E41/10/01). There are specific policies for Authorised processes, Food Safety, Health & Safety & Private Sector Housing. The policy has been revised taking into account the Statutory Code of Practice for Regulators, which only applies to policies not individual cases.

Statement of Objectives
2. It is the Rother District Council’s duty to ensure that the public and environmental health of the district is protected by enforcing all relevant statutory provisions. To achieve improvements to the health and environment of the communities of Rother. It is recognised that as a regulator a key element of our activity is to allow, or even encourage, economic progress and only to intervene if there is a clear case for protection. Risk assessments (which may not be written) will be used to concentrate resources in areas that need them most. We will provide authoritative accessible advice easily and cheaply. Inspections will not place without a reason. This means that inspections will take place following a risk assessment, to check compliance with licensing conditions, if part of a planned program of inspections, following complaints or relevant intelligence. Businesses will not be asked for unnecessary information or be asked for the same piece of information twice. Businesses that persistently break regulations will be identified quickly and face proportionate and meaningful sanctions.

Enforcement Policy
3. Enforcement action emphasis will be based primarily upon risk to public and environmental health.

4. Due regard will be had to Codes of Practice issued under the Food Safety Act 1990, Environmental Protection Act, Housing Acts, Health & Safety at Work etc Act 1974 and other relevant Acts, Local Authorities’ Co-ordinating Body on Food & Trading Standards (LACORS) guidance, Health & Safety Executive, Department of Environment Food & Rural Affairs, together with any procedures produced by the Council to ensure consistency of enforcement, etc. Due regard will be had to the principles of the enforcement concordat and to the provisions of The Human Rights Act 1998.

5. This policy and associated procedures have been revised to take account of the provisions of the Human Rights Act 1998. These affect not only proprietors of businesses (enjoyment of property) but also the rights of their customers to protection of their right to life, right to respect for private home and family life. Officers must consider the Human Rights Act 1998 before taking a decision and ensure that all actions are necessary and proportionate.

6. All authorised officers are required to abide by this enforcement policy in determining whether to take no action, informal action or formal action and they should record and justify their decision.
7. Each authorised officer will be provided with a copy of this enforcement policy and any subsequent revisions.

8. Initial and on-going training will be arranged and written procedures will be issued to authorised officers to assist them to achieve consistency in enforcement.

9. The enforcement policy will be reviewed annually or as required by the Director of Services.
B. THE DECISION MAKING PROCESS

When to Prosecute

1. The Authorised Officers will provide the Principal Environmental Health Officer, Head of Housing or Head of Environmental Health with a written or verbal report relating to the outcome of an inspection or investigation which the Officer considers, in light of advice within a Code of Practice, statutory guidance and LACORS’ guidance etc, warrants enforcement action.

2. Regard shall be had to the advice of the Council’s legal advisor concerning issues of law and the propriety of prosecution having regard to the CPS code.

3. If the legal advice is that a prosecution is unlikely to succeed, this decision will ordinarily be final. Reasons for declining to proceed should be documented and due regard had to any remarks in so far as they may affect future prosecutions. This will be especially the case if the decision is based on failure to comply with statutory requirements.

C. COMPETENCIES OF OFFICERS

Training and Appointment of Officers

1. All officers undertaking enforcement duties will be suitably trained and qualified so as to ensure that they are fully competent to undertake their enforcement activities, e.g. Environmental Health Officers to be qualified and thereby registered with Environmental Health Registration Board (EHRB).

2. All officers will be authorised or given delegated authority to exercise specified powers under relevant statutes. The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. Authorisation will be in writing and in a form which can be shown on request.

3. The Council supports the principle of continuing professional development and will ensure that all officers are given additional in-post training to maintain up-to-date knowledge and skills.
8. Public Health Act 1936, Environmental Protection Act 1990, Housing Act and Building Acts etc

a) Business Premises and Dwellings

All Environmental Health Officers, Environmental Health Technicians, Trainee Environmental Health Officers can inspect except for Authorised Processes which are only authorised for inspection by Senior Environmental Health Officers, Principal Environmental Health Officers and Head of Environmental Health.

b) Service of Notices

Environmental Health Officers only except for noise from car and intruder alarms where notices can be served by Environmental Health Technicians and Trainee EHO.

c) Prosecutions

Prosecutions can be initiated by Authorised Officers. Disclosure officers must be either the Principal Environmental Health Officer, Private Sector Housing Team Leader, Head of Housing, Head of Environmental Health or Senior Environmental Health Officer. Authority to prosecute to be signed by Director of Services or by the Head of Environmental Health, Head of Housing or on behalf of these Officers by Principal Environmental Health Officer or Private Sector Housing Team Leader. Health & Safety at Work etc Act 1974 prosecutions are authorised by the appointed Inspector.
D. ENFORCEMENT OPTIONS

1. The choices for action are:-

   (a) To take no action.
   (b) To take informal action.
   (c) To use Statutory Notices.
   (d) To use simple cautions.
   (e) To prosecute.
   (f) To issue a Fixed Penalty Notice (if permitted by legislation)

2. Whatever action is deemed to be appropriate, the decision to take will need to stand up to a test of consistency, and must demonstrate both a balanced and fair approach to enforcement.

Food Safety only:

3. If the Local Authority is considering taking enforcement action which it believes may be, or it is informed is, inconsistent with that developed by other Local Authorities or contrary to any advice issued by LACORS, the issue will be referred to the local Food Liaison Group for East Sussex, but its views will not prejudice the action to be taken by the Principal Environmental Health Officer if this would result in an unreasonable delay in resolving the matter.

4. Home Authorities will be consulted whenever the Principal Environmental Health Officer believes action contrary to the advice of the Home Authority is necessary. Primary authorities will be consulted when required by statute.

5. Due regard shall be had to statutory Codes of Practice, LACORS’ guidance and the Home Authority principle.

Health & Safety:

1. Officers will refer to the HSE Enforcement Management Model and complete form EAR/LA before determining enforcement action.
E. TAKING NO ACTION
Taking no action is only appropriate if an offence is trivial, with no public health, safety or environmental health consequences and the offender has a history of compliance.

F. INFORMAL ACTION

Definition of Informal Action

1. “Informal action” is to secure compliance with legislation, including offering advice, issuing verbal warning and requesting action, the use of letters, and the issue of food hygiene inspection reports. There are circumstances in which informal action will be more effective than a formal approach.

When Informal Action is Appropriate

2. Informal action is only appropriate if:-
   * this is the first occasion
   * the act or omission is not sufficiently serious to warrant formal action.
   * from the individual’s/enterprise’s past history, it can be reasonably expected that informal action will achieve compliance within a reasonable period of time, e.g. 6 weeks.
   * confidence in the individual’s/enterprise’s management involved is high.
   * the consequences of non-compliance will not pose a significant risk to public health.

3. Inspection reports will be issued following all programmed Food Safety inspections. This will apply even in those circumstances where conditions at the time of inspection are satisfactory.

4. When an informal approach is used to secure compliance with regulations, written documentation issued, or sent to proprietors, will:-
   • contain all the information necessary to understand what work is required and why it is necessary;
   • where appropriate, specify the general Regulations contravened, measure which will enable compliance with the legal requirements and that other means of achieving the same effect may be chosen; and
   • indicate clearly any recommendations of good hygiene practice, for example under an appropriate heading, to show that they are not a legal requirement.

5. If informal action has been taken the reasons for taking this approach should be recorded.
G. STATUTORY NOTICES

1. Notices will be used when one, or more, of the following applies:-
   * A statutory duty exists to do so, e.g. if a statutory nuisance exists.
   * There are significant contraventions of legislation.
   * There is a lack of confidence in the proprietor or enterprise to respond 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 consequences of non-compliance with relevant legal requirements
     could be potentially serious to an individual’s health and the public or
     environmental health.
   * Although it is intended to prosecute, effective action also needs to be
     taken as quickly as possible to remedy conditions which are serious or
     deteriorating.
   * A false declaration has been made concerning compliance following
     informal advice.

2. The use of statutory Notices will, in general, be related to risk to health, safety
   and threats to the environment. Notices will not be served for minor technical
   contraventions.

3. Notices will be issued only by officers who have been authorised by Rother
   District Council so to do.

4. Notices will not be signed by authorised officers on behalf of non-authorised
   technical officers unless the authorised officer is satisfied that the contravention
   exists and is satisfied that it is significant and that necessary criteria are
   satisfied.

5. Failure to comply with a Notice will, in general, result in Court proceedings. A
   request for prosecution should be sent to the Council’s Solicitor within 3 months
   of the offence of failing to comply with the Notice.

Examples of cases where Notices will normally be served immediately:

a) Car and house alarms.
b) Overflowing drains and sewers where there is a risk to public health.
c) To prohibit "raves" or similar events.
d) To prohibit activities that would seriously damage the environment.
e) Dangerous electrical wiring.
f) Imminent risk to health or safety
Food Safety only:

6. Primary, Home and Originating Authorities will be informed of the outcome of a statutory action.

Emergency Prohibition Notices

7. Emergency Prohibition Notices are to be employed when, having identified an imminent risk of injury to health, it is appropriate to issue Emergency Prohibition Notices. One or more of the following circumstances should apply:

* The consequences of not taking immediate and decisive action to protect public health would be unacceptable.

* An imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including a food analyst or food examiner.

* The guidance criteria, specified in the relevant statutory Code of Practice, concerning the conditions when prohibition may be appropriate, are fulfilled.

* There is no confidence in the integrity of an offer made by a proprietor voluntarily to close promises or cease the use of any equipment, process or treatment associated with the imminent risk.

* The proprietor is unwilling to confirm in writing his/her offer of a voluntary prohibition.

8. Expert advice should be sought before a final enforcement decision is taken whenever the Senior Environmental Health Officer and the Principal Environmental Health Officer consider this is necessary to prove chemical contamination is posing a risk to health.

9. An Emergency Prohibition Notice should not be signed by an authorised officer on another’s behalf unless he/she has witnessed the matter to which the Notice relates.

10. Primary, Home and Originating Authorities, together with LACORS, will be informed of the outcome of Emergency Prohibition Notices.
H. PROSECUTION

Policy

1. The circumstances likely to warrant prosecution may be characterised by one or more of the following:-

   Where the alleged offence involves a breach of the law such that public health or safety or environmental health, safety or well-being is, or has been, put at risk.

   Where the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.

   Where the offence involves a failure to comply in full, or in part, with the requirements of a statutory notice or licensing condition.

   If an activity has taken place which should be licensed.

1a If a “warning letter”, notifying the offender that an offence has been committed has been sent within the last two years a prosecution should be considered if a further offence is committed.

2. When circumstances have been identified which may warrant a prosecution, all relevant evidence and information will be considered, to enable a consistent, fair and objective decision to be made. Generally the Investigating Officer for the purposes of the Criminal Procedure and Investigations Act 1996 will be the Environmental Health Officer concerned. His/her supervisor will normally be the Disclosure Officer.

3. If a decision has been taken that there is enough evidence for a prosecution and that other action such as a simple caution (which requires an acceptance of guilt by the person concerned) would be inappropriate, the Investigating Officer should discuss the case with his/her line manager and then prepare a case for consideration by the Council’s Solicitor. He will be asked to commence a prosecution if he is satisfied that there is a more than even prospect of obtaining a conviction and the requirements of the CPS evidence criteria and Criminal Prosecutions and Investigations Act 1996 have been complied with. In certain circumstances he may require further investigation to be carried out.

4. In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, there must be a positive decision, based on relevant criteria, that it is in the public’s interest to prosecute. The Code of Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance which will be considered, including relevant public interest criteria.
5. In deciding whether or not to prosecute, regard will be had to the guidance contained in the relevant Code of Practice. Factors to be considered will include the following:-

(a) **The seriousness of the alleged offence:**
   - the risk or harm to public or environmental health;
   - identifiable victims;
   - failure to comply with a statutory Notice served for a significant breach of legislation;
   - disregard of public health or safety for financial reward.

(b) **The previous history of the party concerned:**
   - offences following a history of similar offences;
   - failure to respond positively to past warnings;
   - failure to comply with statutory Notices.

(c) **The likelihood of the defendant being able to establish a defence or due diligence defence (Food Safety only)**

(d) **The ability of any important witnesses and their willingness to co-operate**

(e) **The willingness of the party concerned to prevent a recurrence of the problem**

(f) **The probable public benefit of a prosecution and the importance of the case in maintaining community confidence or whether it might establish a legal precedent**
   - As indicated above, advice on the public interest is contained in the Code for Crown Prosecutors. The general advice is “The graver the offence, the less likelihood there will be that the public interest will allow anything other than a prosecution”.

(g) **Whether other action, such as issuing a formal caution in accordance with Home Office Circular 016/2008 or an Improvement Notice, or imposing a prohibition would be more appropriate or effective. (It is possible in exceptional circumstances to prosecute as well as issue a Notice; failure to comply with a Notice would be an additional offence).**

(h) **Any explanation offered by the company or the suspected offender.**
   - LACORS recommends that suspected offenders are invited to offer an explanation before prosecution decisions.

(i) **The defendant is elderly, suffering from mental or physical ill health, etc.**
   Having regard to the issue of protecting the public, this would usually only be relevant if the offender was retiring or closing the business.
The role played by the defendant in the commission of the offence
Any explanation offered by the defendant
Whether the defendant was in a position of authority or trust
Evidence of premeditation on the part of the defendant
Evidence that an offence was committed by a group
The risk to public health
The reliability of the evidence available
The need to influence the offender’s future behaviour
The effect on the defendant’s or witness’s physical or mental health balanced against the seriousness of the offence
The views of any victims
The offence although not serious in itself is widespread in the area where it was committed
The penalty likely to be imposed
Whether the offence is due to a genuine mistake or misunderstanding (but this must be balanced with the seriousness of the offence)

Health and Safety at Work etc Act 1974

The decision whether to prosecute should take account of the evidential stage and the relevant public interest factors set down by the director of public prosecutions in the Code for Crown Prosecutors. No prosecution may go ahead unless the prosecutor finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.

While the primary purpose of the enforcing authorities is to ensure that duty holders manage and control risks effectively, this preventing harm, prosecution is an essential part of enforcement. Where in the course of an investigation an offer has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors, that it is in the public interest to prosecute, then that prosecution should go ahead, the Code for Crown Prosecutors’ requires the decision to prosecute to be kept under continuous review, so that any new facts or circumstances, in support of or undermining the prosecutions’ case, are taken into account in the decision to continue or terminate the proceedings. Where the circumstances warrant it and the evidence to support a case is available, enforcing authorities may prosecute without prior warning or recourse to alternative sanctions.

In the public interest, officers should normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where:

- death was a result of a breach of the legislation,
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of health and safety requirements;
• there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;

• work has been carried out without or in serous non-compliance with an appropriate licence or safety case;

• a duty holder’s standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;

• there has been a failure to comply with an improvement or prohibition notice, or there has been a repetition of a breach that was subject to a simple caution;

• false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;

• inspectors have been intentionally obstructed in the lawful course of their duties.

In the public interest, officers will consider prosecution, or consider recommending prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply:

• it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law;

• a breach which gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.
Prosecution of Individuals

Subject to the above, officers should identify and prosecute or recommend prosecution of individuals if they consider that a prosecution is warranted. In particular, they should consider the management chain and the role played by individual directors and managers, and should take action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or to have been attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy. Individual Directors should be prosecuted if it is likely that the body corporate may be wound up to avoid criminal proceedings. Where appropriate, enforcing authorities should seek disqualification of directors under the Company Directors Disqualification Act 1986.

Prosecution of individual employees may be appropriate if the employee had clearly contradicted the employer’s instructions or has been obstructive.

Death at Work

Where there has been a breach of the law leading to a work-related death, officers need to consider whether the circumstances of the case might justify a charge of manslaughter or corporate manslaughter.

To ensure decisions on investigation and prosecution are closely co-ordinated following a work related death, HSE, the Association of Chief Police Officers (ACPO), the British Transport Police, the Crown Prosecution Service (CPS), the Local Government Association (LGA) and the Office of Rail Regulation (OERR) have jointly agreed and published *Work-related deaths: A protocol for liaison*. Other non-signatory organisations such as the Maritime and Coastguard Agency (MCA), Civil aviation Authority (CAA) and the Chief Fire Officers Association (CFOA), have agreed that they will take account of the protocol when responding to work-related deaths.

The police are responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges. The enforcing authorities are responsible for investigating possible health and safety offences. If in the course of their health and safety investigation, the enforcing authorities find evidence suggesting manslaughter or corporate manslaughter, they should pass it on to the police, if the police of CPS decide not to pursue a manslaughter or corporate manslaughter case, the enforcing authorities will normally bring a health and safety prosecution in accordance with this policy.
I. FIXED PENALTY NOTICES (FPNs)

FPNs will be used in place of prosecution except for serious fly-tips and repeat offenders. The same degree of evidence is required to issue a FPN as is required to instigate a prosecution. FPNs which are not paid within 14 days must be referred for prosecution.

FPNs are not to be issued to children under the age of 16 years.

J. SIMPLE CAUTIONS

Introduction

1. The statutory Code of Practice on legal matters advises that Local Authorities should consider issuing a caution as an alternative to a prosecution.

When the Caution Should be Used

2. The Director of Services or Head of Environmental Health should consider using the caution if the under-mentioned advice indicates that the issue of a caution is a proper, and more appropriate, alternative to the employment of statutory action, when considered in conjunction with the policy detailed elsewhere within this policy document.

Advice

3. Home Office Circular 016/2008 states that the purpose of the caution is:-
   - to deal quickly and simply with less serious offences;
   - to divert less serious offences away from the Courts;
   - to reduce the chances of repeat offences.

4. To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered:-
   - There must be evidence of the suspected offender's guilt sufficient to give realistic prospect of conviction.
   - The suspected offender must admit the offence.
   - The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

   NB If there is insufficient evidence to consider taking a prosecution, then by implication the conditions are not satisfied for the use of a formal caution. It will also be inappropriate to use a formal caution where the suspected offender does not make a clear and reliable admission of the offence. It should be noted that there is no legal obligation for any person to accept the offer of a formal caution, and no pressure should be applied to the person to accept a caution.

Cautioning Officer

5. The designated cautioning officer is the Director of Services or Head of Environmental Health.
K. WORKS IN DEFAULT

Works in default may be carried out where:-

* there is no prospect of the person responsible carrying out the work, e.g. the person is absent or infirm
* there is an imminent risk to public or environmental health, e.g. overflowing sewer or ringing intruder alarm
* a prosecution is not appropriate
* a prosecution has been brought and the works have still not been carried out
* it is appropriate to get the nuisance abated quickly

The Council will seek to recover the all costs incurred including Officer time. The costs of the works are re-charged (not including VAT) plus the cost of officer time plus 20 percent of the cost of the works for administration.

L. SEIZURE OF NOISE EQUIPMENT

Consideration will be given to seizing noise equipment if an abatement/prohibition notice has been contravened. In addition, a seizure may take place if a prohibition notice has been served and it is anticipated that a contravention of the notice will occur. The matter should normally be discussed with the Head of Environmental Health. A warrant may have to be obtained and adequate Police support provided.

M. SHARED ENFORCEMENT ROLE

The Council will consult the East Sussex Fire & Rescue Service, Police, Trading Standards Service, Health & Safety Executive and Environment Agency when appropriate and at all times when required to do so by statute.

N. PARTICULAR INTERESTS OF CONSUMERS

Rother District Council is predominantly a large rural District bordering the English Channel. Tourism and Agriculture are the largest employment sectors. The nature of the tourism does not affect the enforcement policy or practices. Bexhill on Sea has a larger than average retired population. This does not affect the enforcement policy.

O. SERVICE PLANS

Service plans exist for Food Health & Safety and Licensing, Housing and Pollution. Each of these service plans includes enforcement activity. Each year a service plan outcome report is produced.
P. TARGETING

1. Targeting means making sure that regulatory effort is directed primarily towards those who are responsible for risk to health and safety or whose activity gives rise to environmental damage, where the risks are least well controlled or against deliberate or organised crime. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

2. The Department has a number of systems for prioritising regulatory effort and is developing others. They include the response to complaints from the public about regulated activities, the assessment of the risks posed by business operation and the gathering and acting on intelligence about illegal activity.

3. In the case of regulated industries, management actions are important. Repeated incidents or breaches or regulatory requirements which are related may be an indication of an unwillingness to change behaviour or an inability to achieve sufficient control, and may require a review of the regulatory requirements, the actions of the operator and additional investment. A relatively low hazard site or activity, poorly managed, has potential for greater risk to the environment than a higher hazard site or activity where proper control measures are in place.

4. The Council will always seek to recover the costs of investigation in Court proceedings.

Q. RESPONSE TO COMPLAINTS

1. On receipt of a complaint that requires a response or action by the Department the complainant will be contacted within 2 days.

2. If a complaint is anonymous the complaint will not normally be pursued.

R. MANAGEMENT SYSTEMS FOR MONITORING THE POLICY

1. Staff competency and the consistency of enforcement will be reviewed by the department on a regular basis.

2. The Council will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, as far as is reasonably practicable, a uniform and consistent approach. Where local or national co-ordinating bodies exist such as LACORS and the East Sussex Food Liaison Group, the Council will ensure that wherever possible its enforcement practices are consistent with best practice. The review of the enforcement services may involve any of the following activities:-

   - Review of enforcement standards by members of the Council
   - The provision of a Supervising Officer for enforcement action
   - Monitoring visits by line managers
   - Shadowing visits by colleagues
   - Monitoring or correspondence and statutory notices
   - Peer review exercises
• Internal training sessions and workshops on enforcement issues
• Customer satisfaction surveys
• Practice notes

S. CONSULTATION WITH STAKEHOLDERS

The stakeholders of the Environmental Health Service were consulted prior to the adoption of this policy. Ten percent of customers are consulted annually for their comments on the standard of our services. All comments received are considered by the Manager of the service and acted upon as necessary.

If you wish to comment on this Enforcement Policy, please write to Mr A Leonard, Director of Services, 14 Beeching Road, Bexhill on Sea, East Sussex, or e-mail envhealth@rother.gov.uk. Your views will be taken into account when the Policy is reviewed.