ROther District Council
Enforcement Policy for Health and Safety at Work Etc
Act 1974

1. It is Rother district council’s duty to protect the health, safety and welfare of employees and to safeguard others, principally the public, who may be exposed to risks from work activity. This policy sets out the general principles and approach Rother District Council will follow when enforcing health and safety legislation. This policy is written for those who need to know Rother District Council’s approach to health and safety law enforcement and anyone who has an interest in this work.

Comments on this document and/or your experience of this service are welcomed and will be received positively. Please forward your comments to the address listed on the last page.

2. All enforcing authorities, including Rother District Council must seek to ensure compliance with the law. Most of our dealings are with those on whom the law places duties (employers, self employed, employees and others) are informal – inspectors offer information, advise and support, both face to face and in writing. Inspectors may also use formal enforcement mechanisms, as set out in health and safety law, including improvement notices where a contravention needs to be remedied; prohibition notices and where there is a risk of serious personal injury; withdrawal of approvals; variations on licences or conditions, or of exemptions; or ultimately prosecution.

This policy applies to all dealings, formal or informal, between inspectors and duty holders – all contribute to securing compliance.

Note: Health and Safety law is enforced by the Health and Safety Executive (HSE) and local authorities. Premises and activities for local authority inspection are designated by the Enforcing Authority Regulations.

3. Rother DC recognises the Health & Safety Commissions view on enforcement, as that which derived from the philosophy set out in Lord Robens report ‘Safety & Health at Work’ (cmnd 503 1972). Lord Robens considers that there should be a quick and effective response to flagrant breaches of the law and a discriminating and efficient approach to other breaches.

4. Much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. Guidance on how to achieve the goals, is often set out in codes and there is also a wide variety of advisory material describing good practice. Neither codes or guidance material are in terms which necessarily fit every case. In considering whether good practice has been adopted, Inspectors will need to take the relevant codes and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them. More is said about these matters below.
5. Sometimes law is prescriptive – spelling out in detail what must be done. For example, all mines must have more than one exit; contacts with live electrical wires must be avoided. Prescriptive law limits the discretion of the duty holder and the enforcer.

Principles of Enforcement.

6. Rother District Council supports the HSE policy that the enforcement of the health & safety law should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach, targeting of enforcement action and transparency about how we, the regulator, operate and what those regulated expect.

Note: Rother DC has adopted the cabinet office’s enforcement concordat and has an Environmental Health Enforcement Policy which can be viewed on our Web-Site: www.rother.gov.uk.

Proportionality

7. Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holder) expect that action taken by Rother District Council to achieve compliance should be proportionate to any risks to health and safety and the seriousness of any breach.

8. Some health and safety duties are specific and mandatory (i.e. the law says it must be done). Others require action “so far as is reasonably practicable”, to control the risks in the work place; involves the exercise of judgement by the duty holders and discretion by the Inspectors. When duty holders and inspectors cannot reach agreement, the final determination on what is reasonably practicable in particular cases in made by the courts.

9. When the law requires that risks should be controlled so far as reasonably practicable, Rother District Council will, when considering protective measures to be taken by duty holders, always take account of cost as well as degree of risk. Rother District Council may legitimately expect that the relevant good practice will be followed. Where relevant good practice is not clearly established, health and safety law requires duty holders to assess the significance of the risks (both their extent and their likelihood) to determine what action needs to be taken.

Some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences. At the other extreme some risks may be so trivial that it is not worth spending more to reduce them. In general, Rother District Council will measure risk-reducing measures against the associated costs. If there is a significant risk the duty holder must take measures, unless the cost of taking particular actions is clearly excessive.
compared with the benefit of the risk reduction. But this does not mean that the council will take into account the financial circumstances of individual businesses.

Consistency

10. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

11. Duty holders managing similar risks expect consistency from Rother District Council and other local authorities in the advice offered, the use of enforcement notices, approvals etc; decisions whether to prosecute, and in the response to accidents.

12. Consistency is not a simple matter in practice and so Rother District Council have arrangements in place to promote consistency in the exercise of discretion, including liaison with other Sussex local authorities. Rother District Council Inspectors are faced with many variables, the level of hazard, the attitude and competence of management, the accident history all of which may vary between companies which may otherwise appear similar.

Transparency

13. Transparency means helping duty holders to understand what is expected of them and what they should expect from the Inspector. It also means making clear to duty holders not only what they have to do, but where it is relevant, and what they don't have to do. That means distinguishing between statutory requirements and advice or guidance about what is recommended but not compulsory.

14. Duty holders need to know what to expect when an inspector calls and what rights of complaint are open to them. Please read the leaflet "What to expect when an inspector calls" for more detail (Rother District Council Website). Should a duty holder disagree with an Inspector regarding the content of a statutory notice an appeal to the employment tribunal may be made. Rother District Council operates a customer complaint procedure where a customer may complain to an Inspectors manager if they feel they have been treated unfairly. A public register of notices is available for viewing should any member of the public request it.

Targeting

15. Targeting means making sure that inspections are targeted primarily on those whose activities give rise to the most serious risks or where hazards are least controlled; and that action is focussed on the duty holders who are responsible for the risk and who are best placed to control it – whether employers, landlords, suppliers or others.
16. Rother District Council operates a system of prioritising visits according to the risks posed by a duty holders operations; the system also takes account of hazards and the nature and extent of risks. Management compliance is important, because a relatively low hazard site poorly managed can entail greater risk to its workforce or the public than a higher hazard site where risk – control measures are in place.

17. When formal enforcement action is necessary, the person responsible for creating the risk should be held to account for it. The duty holder may be the owner of the premises, or the supplier of the equipment, or the designer or client of the project, rather than the employer of the worker exposed to the risk. Where several duty holders share a responsibility, Rother District Council will take action against those who are regarded to be primarily in breach of the law.

Prosecution

18. Rother District Council will use discretion in deciding whether to initiate a prosecution. Other approaches on enforcement can often promote health and safety more effectively but, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.

19. Rother District Council will consider prosecution when:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and maintenance standards required by law, especially where there would be a normal expectation that a prosecution would be taken or where through the conviction of offenders, others may be deterred from similar failures to comply with the law;

- or there is judged to have been potential for considerable harm arising from a breach;

- or the gravity of the offence, taken together with the general record and approach of the offender warrants it, e.g. apparent reckless disregard for standards, repeated breaches, persistent poor standards;

The decision to prosecute must also take account of the criteria set down in the Code for Crown Prosecutors, and the requirements of the Human Rights Act 1998.

Prosecution of Individuals

20. Subject to the above, Rother District Council will identify and prosecute or recommend prosecution of individuals, including
company directors and managers, if we consider that the conviction is warranted and can be secured.

**Death at Work**

21 Where there has been a breach of the law leading to a work related death, Rother District Council will consider whether the circumstances of the case might justify a charge of manslaughter. Rother District Council will liaise with the Police, Coroners and the CPS and if they find evidence suggesting manslaughter, pass it on to the Police or where appropriate the CPS. If the Police or the CPS decides not to pursue a manslaughter case, Rother District Council will prosecute or recommend prosecution of a health and safety case, if that is appropriate. Any such cases will be investigated in accordance with the current guidance.

**Encouraging Action by the Courts**

22 Health and safety law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and in some cases imprisonment may be imposed by higher courts. Rother District Council supports the HSE’s continued efforts to raise the court’s awareness of the gravity of health and safety offences and encourage them to make full use of their powers. A list of the sanctions presently available to the courts is as below:

**Penalties for Health and Safety Offences.**

**Lower Courts:**

- For a failure to comply with an improvement or prohibition notice, or court remedy order:
  - A fine of up to £20,000, or 6 months imprisonment or Both.

- Breaches of Sections 2-6 of the Health and Safety at Work Act 1974:
  - A fine of up to £20,000:

- For other breaches of the HSW Act not specified above, or of relevant statutory provisions under the act:
  - A fine of up to £5,000;
Higher Courts:

- For a failure to comply with an improvement or prohibition notice, or court remedy order:
  - 2 years imprisonment, or an unlimited fine, or both.

- For contravening licence requirements or provisions relating to explosives:
  - 2 years imprisonment, or an unlimited fine, or both.

- For breaches of the Health and safety at Work Act 1974, or of relevant statutory provisions under the act:
  - Unlimited fines.
Consultation

Rother District Council operates a policy of consultation with its stakeholders to ensure the local needs and aspirations are incorporated into the council’s aims and objectives. This document is publicly available on the Rother District website; and a leaflet summarising its content is also available. This policy is revised annually, please send comments to:

Head of Environmental Health
Rother District Council
14 Beeching Road
Bexhill on Sea
East Sussex
TN39 3LG

E-mail: comservice@rother.gov.uk
Management of the Health and Safety law enforcement service.

Rother District Council uses a combination of processes to manage health and safety law enforcement, which include:

- **Intervention** – before any incident to assess, promote and enforce compliance. (this is done by conducting routine inspections, giving advice, conducting campaigns).
- **Investigation** – after an incident to identify underlying causes and the lesions to be learnt, prevent reassurance, detect breaches and take appropriate action, including formal enforcement: of (accident and incident reports, complaints about work and conditions).
- **Permissioning** – where the law requires close control of these activities where the potential for significant health improvement is high (e.g. asbestos removal).

Rother District Council aims to:

- fulfil the HSE objective of reducing risks and protecting people;
- implement the HSE aims and priority programmes;
- achieve the balance of enforcement processes which optimises overall effectiveness;
- ensure the immediate control of serious risk and promote continuous improvement and long term compliance;
- work with duty holders, employees and their representatives by establishing effective dialogue to encourage open contribution and co-operation in achieving appropriate standards of health and safety;
- use the information supplied by the duty holder and employee representatives to help target the enforcement activity proportionately and appropriately to promote cost effective compliance;
- maintain transparent arrangements to promote public confidence;
- meet stakeholders’ expectations and current Government response performance targets;
- collect, analyse and disseminate information to improve the effectiveness of processes, law, policy and guidance and inform stakeholders;
- work in collaboration with other regulatory authorities (e.g. HSE, petroleum licensing authority).

Rother District Council will ensure that:

- Inspectors are suitably authorised to undertake the tasks for which they are appointed, e.g. to institute proceedings or issue
enforcement notices. Enforcement notices will only be signed and issued by an inspector who is of the opinion that there is, or has been, a contravention of one or more of the relevant statutory provisions or that there is a risk of serious personal injury.

Rother District Council does have procedures in place to enable information to be disclosed, as permitted under section 28 of the Health and Safety at Work etc Act 1974.