

RUSHCLIFFE BOROUGH COUNCIL
CORPORATE ENFORCEMENT POLICY

1.0 INTRODUCTION

- 1.1 The Council is responsible for enforcing a wide range of statutory provisions. This policy explains how the Council's regulatory and enforcement activities will be carried out and what individuals and businesses can expect from those Council services involved in enforcement.
- 1.2 Fair and effective enforcement is essential for protecting the individual and the community as a whole. This includes health and safety, the environment, business and legitimate economic interests.
- 1.3 One of the Council's corporate aims is to reduce levels of crime and anti-social behaviour to make people feel safe. Another is to deliver efficient and effective high quality services. This policy relates to both of those aims.
- 1.4 This policy was adopted by the Council on 17 March 2010. It replaces the Enforcement Policy adopted in 2001. It takes into account the principles of good enforcement contained in the Concordat on Good Enforcement (adopted by the Council on 14 December 2000) and has regard to the principles laid down in section 21 of the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code issued under section 22 of that Act.

2.0 SCOPE

- 2.1 This policy is an umbrella policy which applies to legislation enforced or administered by the Council in the following service areas and to officers engaged in enforcement activity in those areas:
- a) street cleansing
 - b) 'enviro' crime – fly tipping, graffiti, litter, abandoned vehicles
 - c) environmental health – food safety, health and safety, statutory nuisance, dogs
 - d) licensing
 - e) building control
 - f) planning and development control
 - g) benefit fraud
- 2.2 Other policies apply to specific areas of enforcement.
- 2.3 This umbrella policy does not apply to Council Tax enforcement (collecting unpaid council tax), car park enforcement or debt collection.

- 2.4 This policy provides a guide to those regulated and to officers of the Council responsible for enforcement.
- 2.5 In this policy the term 'enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses comply with the legislation the Council enforces. This includes setting standards (whether by imposing conditions on a consent, licence or permission, by order or otherwise), advisory visits, carrying out inspections, carrying out investigations, serving notices as well as taking other more formal enforcement action to deal with contraventions and criminal behaviour such as prosecutions.

3.0 PRINCIPLES OF ENFORCEMENT

- 3.1 The primary purpose of enforcement is to protect the public and individuals. This includes protecting health and safety, the environment, business and legitimate economic interests.
- 3.2 The Council will carry out its enforcement functions in an equitable, practical and consistent manner. It recognises that the effectiveness of legislation in protecting the public and individuals depend upon compliance by those who are regulated by the legislation. It believes most individuals and businesses want to comply with their legal obligations. The Council will therefore seek to help individuals and businesses meet their obligations without unnecessary expense, whilst taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly.

3.3 Standards

Where possible, we will consult with individuals, businesses and other relevant interested parties (including representative bodies) when drawing up standards for enforcement activity carried out by the Council. We will also consult, where appropriate, on the standards we set for compliance, for example in relation to licence conditions. We will publish these standards and monitor performance against them.

3.4 Transparency and Openness

We will provide information and advice on the legislation we enforce and how to comply in plain language and disseminate it as widely as possible. Unless there are good reasons for not doing so, we will be open about what we do and the way we do it, including any charges set and what consultations are undertaken. We will discuss general issues as well as specific problems of compliance with those who have difficulty in complying with their statutory responsibilities.

3.5 Helpfulness, Advice and Guidance

We believe good enforcement is as much about preventing a breach as it is about dealing with contraventions.

We will endeavour to bring to the attention of relevant regulated entities information and advice about their legal responsibilities and any changes to the legal requirements in a timely fashion. We will provide this in a clear, concise and accessible form, using a variety of formats and media.

We will therefore endeavour to work with individuals and businesses to advise and assist them with compliance by helping them understand and meet their statutory responsibilities. We will do so in a courteous, efficient and professional manner. Staff will identify themselves by name and provide a contact point and telephone number for further dealings. Applications for licences, consents, registrations, etc will be dealt with efficiently and promptly.

3.6 Complaints

Complaints about the standard of enforcement activities carried on by the Council may be made to the relevant Head of Service in the first instance or by using the Council's Complaints Procedure. Details can be found on the Council's website www.rushcliffe.gov.uk. Hard copies will be made available on request.

In addition, in many instances there are statutory rights of appeal against formal enforcement action. Where this applies we will set out the rights of appeal in writing.

Complaints of maladministration may also be made to the Local Government Ombudsman (www.lgo.org.uk).

3.7 Proportionality

We will seek to minimise the cost of compliance by ensuring that any action we require is proportionate to the seriousness of any breach and the risks involved. We will normally take into account the attitude and circumstances of the individual or business being regulated in considering what action to take.

In particular, we will take into consideration the impact of any enforcement activity on small businesses and organisations and community organisations being regulated.

3.8 Consistency

Enforcement activity will be carried out in a fair, equitable and consistent manner. However, enforcement officers will be expected to exercise their own judgment in individual cases. Procedures will be put in place to promote consistency of action and decision-making. This will include effective monitoring and review of cases, liaison with other local authorities and enforcement agencies.

3.9 Accountability

We will ensure officers involved with enforcement are properly trained in order to maintain high standards of competence and professionalism in their field.

We will systematically monitor the way we perform our enforcement activities by using a range of performance indicators. Heads of Service will report on performance to the Chief Executive and Deputy Chief Executives at regular Performance Management Clinics and appropriate action will be taken to address any areas of concern.

In addition, performance will be scrutinised by the Performance Management Board on a quarterly basis and complaints will be monitored.

Whilst the Council will be accountable for the efficiency and effectiveness of its enforcement activities it will nevertheless at all times remain independent in its decision-making.

3.10 Targeted Approach

In deciding what enforcement action to take the Council will take into consideration the costs, effectiveness and perceptions of fairness of regulation. In particular, it will consider the economic, social and environmental costs and benefits of adopting a particular approach.

3.11 Risk assessments

Regulatory activity will be informed by properly assessing the risk of non-compliance with statutory requirements and the risk of harm arising from a failure to comply, so that resources can be targeted appropriately. This will apply to data collection, inspection programmes, advice and support programmes as well as to investigation and more formal enforcement action.

Relevant factors to be taken into account include:

- Past compliance records and potential future risks;
- Existence of good systems for managing risks, in particular within regulated entities or sites;
- Evidence of external accreditation;
- Management competence and willingness to comply.

We will consult with regulated entities and other interested bodies in designing any risk methodologies and will publish details of the methodologies used.

4.0 PRACTICES

4.1 Each regulatory service will operate in accordance with its own practices relevant to its specific enforcement area. These will be set out in written codes or guidelines and will include:

- The legislative requirements
- The steps to be taken in dealing with a complaint or taking informal or formal action

- The procedures to be adopted in carrying out surveillance activity

4.2 In operating within these defined practices each service will have regard to the principles set out in Section 3 of this policy and endeavour to minimise the cost of compliance by ensuring that any action required is proportionate to the risk involved.

5.0 ENFORCEMENT OPTIONS

5.1 In many cases the Council has a choice about what enforcement action to take. When making decisions relating to enforcement activity officers will have regard to the following:

- a) The Enforcement Concordat
- b) Legislative and Regulatory Reform Act 2006
- c) Regulators' Compliance Code: Statutory Code of Practice for Regulators (December 2007)
- d) Regulation of Investigatory Powers Act 2000
- e) Police and Criminal Evidence Act 1984
- f) Criminal Proceedings and Investigation Act 1996
- g) The Code for Crown Prosecutors
- h) Data Protection Act 1998
- i) Human Rights Act 1998
- j) Freedom of Information Act 2000
- k) Crime and Disorder Act 1998
- l) Race Relations Act 1976
- m) Local Government Acts
- n) Other relevant Acts
- o) Other relevant Government guidance and professional advice
- p) Other policies of the Council relating to the specific service areas.
- q) Home Office guide on the use of Simple Cautions

5.2 In deciding the appropriate enforcement action to take officers will have regard to the following criteria and all the circumstances of the case.

- The seriousness of the offence or contravention;
- The history
- The likelihood of compliance
- The consequence of non-compliance
- The likely effectiveness of the enforcement options

These criteria are not exhaustive.

5.3 After considering the enforcement criteria the Council will consider the following options:

- Take no action
- Take informal action
- Serve a statutory notice

- Issue a formal caution
- Suspend, revoke or refuse to renew a licence
- Remedy a breach
- Impose an administrative penalty
- Issue a fixed penalty notice
- Prosecution
- Injunction

5.4 There may be other options available depending on the relevant legislation.

5.5 Generally, we will take a staged approach to enforcement so that informal action will be considered before formal action, in particular, prosecution. We will usually give people the opportunity of discussing and remedying any problem with compliance although in some cases immediate action may be necessary.

5.6 **Informal Action**

Where practicable, regulatory services will endeavour to resolve matters without the use of formal notices, prosecution or the courts. This will usually be when:

- the act or omission is not serious enough to warrant formal action; or
- there is no history of non-compliance;
- the Council can reasonably expect informal action will result in compliance; or
- the consequence of non-compliance will not lead to significant harm

5.7 Informal action (including any advice) will be confirmed clearly and concisely in writing. We will clearly distinguish between what action is required to secure compliance with the law and other advisory action.

5.8 **Fixed Penalty Notices**

We will normally issue Fixed Penalty Notices for the following types of offence

- Dog fouling
- Littering
- Fly Posting
- Smoke free enforcement

These notices result in fines being paid to the Council. There are procedures for appeal.

5.9 **Statutory Notices**

A statutory notice will be issued where there is a statutory duty to do so or if there are significant statutory contraventions or if any of the criteria referred to in 5.2 above make it appropriate to do so.

Failure to comply with a statutory notice may result in prosecution and in some cases can result in the Council carrying out works in default and seeking to recover the cost.

5.10 Prosecution

Not every contravention of the law should be prosecuted through the Courts. The Council will weigh the seriousness of the offence (taking into account the harm done or the potential harm arising from the offence) with other relevant factors, including the financial circumstances of the defendant, mitigating circumstances and other public interest criteria.

The Council will have regard to the Code for Crown Prosecutors issued under section 10 of the Prosecution of Offences Act 1985 in deciding whether to prosecute in any particular case. Thus, before starting proceedings, the Solicitor to the Council must be satisfied that there is a realistic prospect of a conviction based on the evidence (that is, there must be sufficient admissible, substantial and reliable evidence to secure a conviction). In addition, the Council will balance carefully and fairly the various public interest criteria as against the seriousness of the offence. These public interest criteria include:-

- a) the likely sentence (if convicted);
- b) previous convictions and conduct of the defendant;
- c) whether there are grounds for believing the offence is likely to be repeated;
- d) the prevalence of the offence in the area;
- e) whether the offence was committed as a result of a genuine mistake or misunderstanding;
- f) any delay between the offence taking place and the date of trial;
- g) the likely effect the prosecution will have on the defendant;
- h) whether the defendant has put right the loss or harm caused.

If a number of offences have been committed and prosecution is deemed appropriate then in selecting the offences for prosecution the Council will have regard to the need to reflect the seriousness of the case and to give the court adequate sentencing powers to deal with the case appropriately.

Through judicious exercise of discretion, the Council will aim for a consistent and uniform approach to prosecution, having due regard to the deterrent effect of a prosecution and the need to deal with offences in a proportionate way.

5.11 Simple Caution

Occasionally, a formal caution may be issued instead of prosecution proceedings. The Council will have regard to the guidance contained in Home Office Circular 16/2008 in deciding whether or not to offer a caution.

6.0 EQUALITIES

- 6.1 The Council is committed to delivering all enforcement activities in accordance with its Equality and Diversity Policy and will embed the principles of that policy in its approach to its enforcement and regulatory functions. Therefore, the Council will treat all people equally and fairly, irrespective of their nationality, political views, race, gender, disability, age, religion, or sexual orientation.