



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 The Corporate Strategy 2019-2023 has 4 aims:

- Supporting economic growth to ensure a sustainable, prosperous and thriving local economy
- Maintaining and enhancing our residents' quality of life
- Transforming the Council to enable the delivery of efficient high quality services
- The Environment

This policy relates to all of those aims.

1.4 The current version of the policy was adopted by the Council in March 2010. It replaced the Enforcement Policy originally 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' Code issued under section 22 of that Act which came into force on 6 April 2014 and which replaced the former Regulators' Compliance Code.

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 and waste
- b) 'enviro' crime – fly tipping, graffiti, litter, abandoned vehicles
- c) environmental health – food safety, health and safety, private sector housing including empty homes, environmental protection, statutory nuisance, dogs, animal welfare, public health, anti-social behaviour
- d) licensing
- e) building control
- f) planning and development control

2.2 This policy is supplemented where required by individual service area Enforcement Policies and protocols which, whilst following the corporate approach, will provide information in greater detail as to how the specific legislation applicable to that service is applied. Officers across the Council who are involved with enforcement will work collaboratively to resolve problems, ensuring that the powers utilised are the most appropriate and effective and keeping others informed as to progress and outcomes.

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, issuing penalty notices as well as taking other more formal enforcement action to deal with contraventions and criminal behaviour such as prosecutions or other legal sanctions.

3.0 PRINCIPLES OF ENFORCEMENT

3.1 The primary purpose of enforcement is to protect the public and / or the environment. This includes protecting health and safety, individuals, 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 the environment depends 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. Where appropriate 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 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 licenses, 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 Director, Service Manager or Lead Specialist 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 of the complaints form and/or procedure can 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, the risks involved and the requirements set out in the relevant legislation. Where appropriate, we will take into account the attitude and circumstances of the individual or business being regulated and/or the specific characteristics of the area impacted by the breach 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 are 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 monitor the way we perform our enforcement activities using a range of performance indicators. Lead Specialists will report on performance to the Executive Management Team at regular Performance Clinics and appropriate action will be taken to address any areas of concern.

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.

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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 can 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' Code
- 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 2010
- i) Human Rights Act 1998
- j) Freedom of Information Act 2000
- k) General Data Protection Regulations 2016
- l) Anti-Social Behaviour, Crime and Policing Act 2014
- m) Crime and Disorder Act 1998
- n) Equality Act 2010
- o) Local Government Acts
- p) Other relevant Government guidance and professional advice
- q) Other policies of the Council relating to the specific service areas.
- r) Home Office guide on the use of Simple Cautions
- s) Service specific legislation
- t) RBC internal protocols and procedures
- u) all other relevant legislation applicable from time to time

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 (where appropriate):

- Prevention
- Approvals, Consents and Licences
- Take no action
- Take informal action
- Serve a statutory notice
- Issue a simple caution
- Suspend, revoke or refuse to renew a licence
- Remedy a breach
- Impose an administrative penalty
- Issue a fixed penalty notice
- Prosecution
- Injunction or other Legal / Court Sanction

5.4 There may be other options available depending on the relevant legislation, and not all of the options listed above will apply in every case.

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 Prevention

We believe that the first step in enforcement is to promote good practice, ensure policy compliance and prevent contravention of the law by raising awareness and promoting good practice. This approach will be applied when we are not aware of any specific contraventions of the law.

5.7 Approvals, Consents and Licences

We provide a range of approvals, consents and licences as specified by individual pieces of legislation. Most of these are compulsory, such as planning applications, licensing applications and building regulation approvals, but a few are optional. These are an
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important part of the preventative aspect of our work.

We will work with applicants to help them to understand what is required to gain approval through pre-application advice (fees for this service may apply), published guidelines, and post-application discussion.

Applications may be approved as they are submitted, varied by agreement and then approved, approved subject to conditions or rejected. Applicants, or their agents, will always be notified, in writing, of the outcome of their application, including the reasons if rejected. Details of any rights of appeal will be provided at the time the decision is notified.

Any rejection notice will inform the applicant, or their agent, of the reasons for refusal and any right of appeal.

5.8 Informal Action

Where appropriate, 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

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.

5.9 Formal Action

In most situations before formal action is taken, we will provide an opportunity to discuss matters and, hopefully, resolve points of difference. The extent of this will depend on the seriousness of the contravention, and may not be possible where immediate action is considered necessary, e.g. where there is an immediate risk to health, safety or the environment, or where the formal action takes the form of a fixed penalty notice.

Circumstances where formal action will be considered include (but are not restricted to):

- There is a significant contravention of legislation
- The wording of legislation requires the Council to take a specified action
- An informal approach has failed
- There is a history of non-compliance with informal action
- There is a lack of confidence in the successful outcome of an informal approach

- Standards are generally poor, suggesting a low level of awareness of, and compliance with, statutory responsibilities
 - The consequences of non-compliance, for health, safety, the environment, or other Council priorities, are unacceptable and/or immediate
 - There is demonstrable harm to the amenity of the area
 - Effective action needs to be taken quickly in order to remedy conditions which are deteriorating
 - Formal action is expected to achieve the desired outcome without incurring expense or inconvenience that is disproportionate to the risks
 - Legal requirements, relevant formal guidance, or other Council policies or strategies require formal action to be taken
 - A charge applied by a Fixed Penalty Notice has not been paid
- 6 Formal action can take any form that the Council is empowered by legislation to take. The following will be the most commonly used.
- Fixed Penalty Notices

Government guidance on the issuing of fixed penalty notices can be found in the Code of Practice for Litter and Refuse: Part 1A - effective enforcement (publishing.service.gov.uk). Government guidance for the issuing of civil penalties can be found in the Civil penalties under the Housing and Planning Act 2016 - GOV.UK (www.gov.uk)

We may issue Fixed Penalty Notices for the following types of offence

- Dog fouling
- Littering
- Fly Posting
- Fly Tipping
- Smoke free enforcement
- Smoke Control
- Breaches of Housing Standards
- Anti-Social Behavior

These notices result in fines being paid to the Council. There is no formal right of appeal against a FPN but if it remains unpaid, the matter would then be decided by the Court..

A fixed penalty notice is not a criminal fine and does not appear on an individual's criminal record. If a fixed penalty is not paid, the Council may commence criminal proceedings or take other enforcement action in respect of the breach

If a fixed penalty is paid within the specified timescale in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at the Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a civil/fixed penalty notice.

Civil Penalties

The Council has powers to issue civil notices in respect of some breaches. If a civil penalty is not paid, the Council may commence proceedings or take other enforcement action in respect of the breach

If a civil penalty is paid within the specified timescale in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a civil penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue civil penalties where it has specific powers to do so. If civil penalties are available, their issue is at the Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that proceedings are more appropriate than the issue of a civil penalty.

Community Protection Notices

We normally issue a Community Protection Notice for the following types of offences

- Nuisances
- Waste accumulations on private land
- Anti-Social Behaviour
- Animal related issues

These notices are served where the behaviour is having a negative impact on the local community's quality of life. A Community Protection Notice will only be served after the issue of a written warning.

A Community Protection Notice can be appealed in the Magistrates Court within 21 days. Failure to comply with the notice is an offence and may result in a fine or fixed penalty notice.

Statutory Notices

A statutory notice may be issued where there is a statutory duty to do so or if there are

statutory contraventions or if any of the criteria referred to in 5.2 above make it appropriate to do so. Where a statutory notice is served, the method of appealing against the notice and the timescale for doing so will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right and what the likely consequences are if the notice is not complied with. In some cases a statutory notice can be served to prevent the occurrence or recurrence of a problem e.g. a noise nuisance.

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.

Work In Default

In general, it is the responsibility of others to achieve compliance with the law. In certain cases the Council may undertake work to achieve compliance on behalf of others, and may seek a warrant to gain entry to land or premises to do so. This may occur if the responsible person fails to comply, cannot comply by virtue of genuine hardship, or is unable to comply by virtue of being absent. In these cases the Council's costs will be recovered from the responsible person. If the costs cannot be recovered, they will usually be placed as a charge against the property, to be recovered at a later date.

Prosecution / Civil Penalties

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.

Civil penalties may be considered where there are clear breaches of enforcement notices, order or HMO licence condition(s) or any relevant HMO management regulation(s).

Simple Caution

Occasionally, a simple caution (previously known as a formal caution) may be issued instead of prosecution proceedings. The Council will have regard to the guidance contained in the Ministry of Justice guidance

'Simple Cautions for Adult Offenders' (Apr. 2015) in deciding whether or not to offer a simple caution.

A 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 3 years before.

Where the offer of a caution is refused, a prosecution will generally be pursued. No pressure will be applied to a person to accept a caution. The Council maintains a central register of cautions administered

6.0 EQUALITIES

6.1 In developing this policy, the council has recognised its responsibility under the Equality Act 2010 to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimization and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not

The Act and the Council seeks to outlaw unlawful discrimination against a person or group of people because of:

- Age

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- Disability
- Gender Reassignment
- Marriage and civil partnerships (in respect of the requirement to have due regard to the need to eliminate discrimination)
- Pregnancy and maternity
- Race
- Religion
- Sex
- Sexual Orientation