

# RUSHMOOR BOROUGH COUNCIL – CORPORATE ENFORCEMENT POLICY

## INTRODUCTION

The primary purpose of the Council's regulatory services is to support compliance in order to protect residents and the wider public, businesses, the environment and groups such as consumers and workers.

This document sets out what persons and other bodies can expect from the Council's regulatory services when enforcement action is considered, and commits the Council to good enforcement practice.

This Corporate Enforcement Policy is designed to provide an overarching enforcement policy, with each regulatory service providing specific policies relevant to their activities including: community safety, pollution control, environmental protection, health and safety, food safety, animal welfare, licensing, private sector housing, parks and open spaces, leisure facilities, planning and building control, council tax recovery, benefits fraud, car parks, parking, street cleaning and abandoned vehicles.

This document has been prepared with regard to the current principal legislation and statutory guidance (shown at Appendix A).

## GENERAL PRINCIPLES OF ENFORCEMENT

The Council believes in firm but fair regulation and, where possible, a graduated approach. Underlying this policy are general principles of good enforcement derived from central guidance.

The Council is committed to carrying out regulatory activities in accordance with these principles, namely:

**Proportionality** - The enforcement action the Council takes will be proportionate to the risks posed, the size and nature of the regulated activity and to the seriousness of the offence and/or the harm caused.

**Consistency** – The Council will be consistent in enforcement decision making, in the advice given, and in responses to complaints and other incidents.

**Openness and Accountability** - Openness and accountability is important to maintain confidence in the Council's ability to regulate. It means helping everyone who uses services, or against whom enforcement action is taken, to understand what is expected from them, and what they should expect from the Council.

**Risk Assessment and Targeting** – The Council will ensure that appropriate risk assessment is used to direct regulatory efforts where they are most needed including, for example, at those responsible for risk to safety, health or serious environmental damage, at incidents where risk is least well controlled or at deliberate or organised crime. No inspection takes place without a reason.

Furthermore, the Council's regulators will similarly operate in accordance with the specific obligations of the Regulators Compliance Code:

- **Supporting Economic Progress** – The Council will consider the impact of regulatory interventions on economic progress through the consideration of the costs, effectiveness and perceptions of fairness of regulatory activity.

- **Advice and Guidance** – The Council’s regulators will seek to provide information, advice and support, easily and cheaply, to make it easier for regulated entities to understand their obligations, taking into account their needs and circumstances.
- **Risk Assessment** – The Council’s regulators will ensure that the allocation of regulatory resource is targeted where it will be most effective.
- **Inspections and other visits** – The Council’s regulators will carry out interventions in accordance with risk assessment, where visits are requested (if appropriate) or where the Council is acting on relevant intelligence.
- **Information Requirements** – The Council’s regulators will seek to balance the need for information from regulated parties with the burden that this imposes.
- **Compliance and Enforcement Actions** – The Council’s regulators will seek to support compliance by positive and proactive approaches, as well as targeting those who deliberately or persistently breach the law.
- **Accountability** – The Council will be accountable for the efficiency and effectiveness of regulatory activities and will remain independent in decision making.

## **EQUALITY, DIVERSITY AND THE PROTECTION OF HUMAN RIGHTS**

The Council recognises the statutory duty to promote equality, particularly the Council’s Equality and Diversity Policy, in enforcement decisions. This will ensure that the needs of all sectors of the community are recognised. In accordance with that policy, all policies are monitored for any adverse impact on equality issues.

The Council will similarly ensure that enforcement actions and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998.

## **ENFORCEMENT OPTIONS**

Where it becomes necessary to take more formal enforcement action against a business, or member of the public, we will do so. There is a wide range of enforcement tools available to the Council’s regulators, including:

- (a) No action
- (b) Informal Action and Advice
- (c) Fixed Penalty Notices
- (d) Penalty Charge Notices
- (e) Formal Notice
- (f) Seizure of goods/equipment
- (g) Injunctive Actions and other Civil Sanctions
- (h) Refusal/Suspension/Revocation of a licence
- (i) Administrative Penalties
- (j) Simple Caution
- (k) Prosecution

The aim of the Council's regulators is to:

- (a) change the behaviour of the offender
- (b) change attitudes in society to offences which may not be serious in themselves, but which are widespread
- (c) eliminate any financial gain or benefit from non-compliance
- (d) be responsive and consider what is appropriate for the particular offender and regulatory issue
- (e) be proportionate to the nature of the offence and/or the harm caused
- (f) restore the harm caused, where appropriate
- (g) deter future non-compliance

Decisions about the most appropriate enforcement action to be taken are based upon this policy and in accordance with the Council's Constitution and Scheme of Delegation. The Council's enforcement activities, including investigations and formal actions, will always be conducted in compliance with statutory powers and relevant legislation.

In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things:

- (a) the seriousness of the compliance failure
- (b) the past and current performance of the alleged offender, for example, previous breaches of law, or a failure to comply with statutory notices
- (c) any obstruction on the part of the alleged offender
- (d) the nature and extent of the risk
- (e) a blatant disregard for the laws, deliberate intent or negligence
- (f) the vulnerability of those affected
- (e) statutory guidance, codes of practice and legal advice
- (h) a person's age in relation to young people (termed 'juveniles') aged under 18

## **NOTIFYING ALLEGED OFFENDERS**

If it is the intention of the Council to take formal enforcement action against an alleged offender, they will be notified as soon as is practicable, as appropriate, unless this could impede an investigation or pose a safety risk to those concerned or the general public.

In particular, as appropriate, the Council will:

- explain clearly why the action is necessary and what remedial action, if any, is required. Regulators will clearly separate best practice, advice and legal requirements
- ensure that the alleged offender, where appropriate, has the opportunity to discuss what is needed to comply with the law before formal enforcement action is taken. This is unless urgent action is required, for example, to protect the environment
- where urgent action is required, provide a written explanation of the reasons as soon as possible after the event
- give a written explanation on any rights of appeal against formal enforcement action at the time the action is taken
- ensure that the Council's Comments and Complaints Procedure remains timely, effective and easily accessible

During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. The Council will take all reasonable steps to protect personal information about individuals, in accordance with our obligations under the Data Protection Act 1998. However, the Council may be permitted or obliged to disclose personal information in accordance with legislation (such as the Freedom of Information Act 2000), court or tribunal procedural requirements, internal data sharing between Council services and data sharing arrangements with external bodies.

## **AN EXPLANATION OF ENFORCEMENT OPTIONS**

**No Action** - In certain circumstances, contraventions of the law may not warrant any action. For example, where formal enforcement is inappropriate in the circumstances, such as where the offender is frail or suffering from serious ill health, and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

**Informal Action and Advice** - For minor breaches of the law, verbal or written advice may be given to support compliance. Any contraventions of the law will be clearly identified and advice given on how to put them right including, where appropriate, a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. Duty holders may be advised about 'good practice', but a clear distinction will be made between what must be done to comply with the law and what is advice only. Failure to comply could result in an escalation of enforcement action.

**Fixed Penalty Notices (FPNs)** - Certain offences are subject to FPNs where prescribed by legislation. Where legislation permits, an offence to be dealt with by way of a FPN, this may be administered without issuing a warning.

**Penalty Charge Notices (PCNs)** - Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. The Council's regulators may choose to issue a PCN without first issuing a warning.

**Failure to accept a FPN and/or a PCN** - In circumstances where an alleged offender fails to accept or pay a FPN, then in order to maintain the integrity of these legislative regimes, the Council may consider an escalation of enforcement action. This may include consideration of a prosecution for the original offence under the primary legislation.

Similarly, where a person or body corporate fails to accept or pay a PCN, the Council may consider an escalation of enforcement action. This may include consideration of civil action to recover the debt. A failure to pay a FPN or PCN is a material consideration for the purposes of deciding whether a prosecution will be taken, or civil debt recovery commenced.

**Formal Notice** - Certain legislation enforced by the Council allows notices to be served requiring duty holders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, take into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice. All notices issued will include details of any applicable Appeals Procedures.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with, the Council may carry out any necessary works to satisfy the requirements of the notice. Where the law allows, the cost we incur in carrying out the work may be recovered from the person/business served with the notice.

**Seizure** - Certain legislation enables authorised enforcement officers to seize goods, equipment or documents, for example, unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When goods are seized, the person from whom the goods are taken will be given an appropriate receipt.

**Injunctive Actions and other Civil Sanctions** - In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with, for example, dangerous circumstances or environmental or public health detriment.

**Suspension, Revocation and Variation of Licences, etc** – In certain circumstances, and in accordance with service specific policies, certain licences and other permissions may be suspended, revoked or varied.

**Administrative Penalties** – In certain circumstances under Benefits legislation an Administrative Penalty may be offered as an alternative to prosecution following fraudulent activity.

**Simple Caution** - In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered with the consent of the offender as an admission of guilt. For a Simple Caution to be issued, the following criteria must be satisfied (in accordance with Home Office guidance (Circular 16/2008)):

- (a) sufficient evidence must be available to prove the case;
- (b) the offender must admit the offence;
- (c) it must be in the public interest to use a Simple Caution;
- (d) the offender must be 18 years or over.

If an offender is found guilty of committing another offence anywhere in England and Wales, the Simple Caution may be cited in court, and this may influence the severity of the sentence that the court imposes. The refusal of an offender to be cautioned does not preclude the matter being escalated to prosecution. In order to maintain the integrity of these legislative regimes, any such refusal will be a material consideration when deciding whether the offender should then be prosecuted for that offence.

**Prosecution** - In circumstances where none of the other forms of enforcement action are considered appropriate a prosecution will be considered. In determining this course of action the Code for Crown Prosecutors will be applied which sets out the general principles to follow when making a decision to prosecute. This includes the tests of whether there is enough evidence against the defendant and whether it is in the public interest to bring the case to court. A prosecution will usually take place if there is sufficient evidence, unless the public interest factors against prosecution clearly outweigh those in favour of prosecution.

The decision to prosecute will be made by the Solicitor to the Council in consultation with the relevant Head of Service and Council Member in accordance with the Council's Constitution and Scheme of Delegation.

## **RIGHTS OF COMPLAINT AND APPEAL**

If any person or body against whom enforcement action is taken, or anyone with a legal interest in the outcome, is unhappy with enforcement action taken by the Council, the matter must be pursued in accordance with any formal rights to appeal or similar where available. These will be brought to the attention of the person or body concerned. Dissatisfaction with information or advice provided may be pursued in accordance with the Council's Comments and Complaints Procedure."

## **LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES**

The Council will, where appropriate, cooperate and coordinate with regulatory bodies and/or enforcement agencies to maximise the effectiveness of enforcement actions. Subject to statutory restrictions, the Council may share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including government agencies, the police, fire authorities, other statutory undertakers and other local authorities.

## **MONITORING**

This Corporate Enforcement Policy and any enforcement action taken under it will be monitored by, for example, reports to Directors' Management Board and/or reports to Cabinet and Committees.

## **AVAILABILITY OF THIS CORPORATE ENFORCEMENT POLICY**

This Policy is available on the Rushmoor Borough Council Website at [www.rushmoor.gov.uk](http://www.rushmoor.gov.uk) If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us by:

- **e-mailing:** customerservices@rushmoor.gov.uk
- **telephoning:** 01252 398399
- **writing to:** Rushmoor Borough Council  
Council Offices,  
Farnborough Road,  
Farnborough  
Hampshire GU14 7JU

On request, this Policy will be made available on tape, in Braille or large type.

## **REVIEW OF THE CORPORATE ENFORCEMENT POLICY**

This Policy will be reviewed as and when required, but at least every three years. We will continue to seek feedback from those who use or receive our services about how we can improve. Similarly, we will always explain any right of complaint or appeal. The right to raise complaints is detailed in the Council's Comments and Complaints Procedure.

**Appendix A** - This policy has been prepared with regard to the current principal legislation and statutory guidance as follows:

- The Regulatory Enforcement and Sanctions Act 2008
- Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 SI665/2009
- Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 SI670/2009
- Legislative and Regulatory Reform Act 2006
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007
- Regulators' Compliance Code
- The Human Rights Act 1988; and
- The Code for Crown Prosecutors