

# **Rotherham Metropolitan Borough Council's Enforcement Policy**

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## **1. Introduction**

### **1.1 Rotherham Metropolitan Borough Council's approach to dealing with non-compliance**

This document is the Enforcement Policy for Rotherham Metropolitan Borough Council (the 'Council'). It is based on the principles of transparency, consistency and proportionality and sets out the key principles under which officers will seek to achieve compliance with the legislation we enforce. The policy conforms to the Regulators' Code (Better Regulation Delivery Office [BRDO]) April 2014, and should be read in conjunction with any applicable service specific policies and procedures.

Our purpose is the delivery of efficient, targeted and proportionate regulatory services focused by risk assessment to provide a positive approach to those regulated and compliance.

The Council's Corporate Priorities are supported by providing protection from harm for individuals and the environment, enabling businesses to flourish without unnecessary

burdens of inspection and regulation, and improving the health and wellbeing of those within the Borough.

We will ensure that we protect and, at least maintain, good standards and conditions that impact on the living, neighbourhood and work environments of all who live, work and visit Rotherham.

The Council is committed to good enforcement practice and adherence to the current legislation, guidance, and codes of practice, that influence the policy, (see [Appendix A](#)).

We will exercise our regulatory activities in a way which is:

- **Proportionate** – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
- **Accountable** – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
- **Consistent** – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities.
- **Transparent** – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.
- **Targeted** – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

The Council will avoid imposing unnecessary regulatory burdens, and policies, procedures and practices will consider supporting or enabling economic growth by considering economic impacts and costs of compliance with a view to improving confidence in compliance of those regulated and encouraging compliance.<sup>1</sup>

The Council will ensure that regulatory officers have the necessary knowledge and skills to:

- Support those that they regulate
- Understand those they regulate
- Understand the statutory principles of good regulation and how activities are delivered in accordance with the Code.

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<sup>1</sup> Section 1.1, [Regulators' Code](#)

This Enforcement Policy has been developed following review of the previous General Enforcement Policy in light of the new Regulators Code. Consultation with stakeholders will take place in 2015, with a target of completion by April 2015.<sup>2</sup>

Following consultation, approval of the Enforcement Policy will be sought from Cabinet. Once the Enforcement Policy has gained approval the Policy will be published, and together with service standards and function specific Enforcement Policies drawn up by each individual service area, will be available in electronic or paper format upon request.

## **2. Purpose of the Policy**

### **2.1 *The Enforcement Policy details Rotherham Council's policy in respect of its approach to dealing with non-compliance to:***

- a) Public and businesses those affected by regulatory activities; and
- b) Officers of the Council

All officers will have regard to this document when making enforcement decisions. Any departure from this policy must be exceptional, capable of justification and be fully considered by the Director of service before a final decision is taken. This provision shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made. In cases of emergency or where any exceptional conditions prevail, the Chief Executive may suspend any part of this policy where necessary to achieve effective running of the service and/or where there is a risk of injury or to health of employees or any members of the public.<sup>3</sup>

## **3. Application of the Policy**

### **3.1 *Scope of the policy, and service areas referred to***

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<sup>2</sup> Section 2.1, [Regulators' Code](#) requires regulators, before changing policies, practices or service standards, to consider the impact on business and to engage with business representatives.

<sup>3</sup> Section 6.4, [Regulators' Code](#) requires regulators to have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.

This document sets out what business and others being regulated can expect from the Council's regulation, enforcement, and officers.

The Enforcement Policy relates to those enforcement and regulatory functions discharged by the Council's Neighbourhood and Adult Services' Safer Neighbourhoods and Business Regulation Services; and Environment and Development Services' Streetpride and Waste Management Services.

The Policy does not cover the regulatory and enforcement functions delivered by Planning and Building Control Services; this is because their regulatory statutory powers are not scheduled within Part 3 of the 2007 order. The extant list of regulations covered by the Regulators' Code is found within the schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007.

It commits regulation and enforcement to good enforcement practice with effective procedures and clear policies.

Regulation and enforcement's primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment and groups such as consumers and workers. However, we reserve the right to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.

This Enforcement Policy is the overarching Enforcement Policy for the Council and each regulatory service covered will have function specific Enforcement Policies in place.

## **4. Our approach to dealing with non-compliance**

### **4.1 *Rotherham Council's approach to dealing with non-compliance***

We recognise that most businesses and individuals strive to comply with the law, however, firm action will be taken against those who flout the law or act irresponsibly.

We will carry out all of our enforcement duties, including taking formal enforcement action, in a fair, equitable and consistent manner. Whilst officers exercise judgement in individual cases, we will have arrangements in place to promote consistency including liaison with other agencies and authorities.

Formal enforcement action will generally only be considered and taken in the first instance in cases where individuals have sought to obtain an unfair commercial advantage, intentional exploitation, unacceptable risk to the public, environment or animal health, safety or welfare, or other such situations that are considered to be so serious as to warrant formal action.

Where there is non-compliance the Council will clearly explain the non-compliance and provide opportunity for discussion, to ensure consistency and proportionality, unless there is a need for immediate enforcement action.<sup>4, 5</sup>

The Council will ensure that mechanisms are in place to allow those regulated, and the public, to express views, provide feedback and contribute to the development of regulatory policies and service standards.

The Council will consider the impact on business, and engage with businesses, before changing policies and service standards.

We recognise that prevention is better than cure and will actively work with business and residents to provide advice on and assistance with compliance with the law. In doing this we will ensure that:

- Legal requirements are made available and communicated promptly upon request.
- The information we provide will be in clear, concise and accessible language and will be confirmed in writing where necessary.

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<sup>4</sup> Section 2.2, [Regulators' Code](#)

<sup>5</sup> Section 2.2, [Regulators' Code](#). The requirement to provide an opportunity for dialogue does not apply where the regulator can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach, or where providing an opportunity for dialogue would be likely to defeat the purpose of the proposed enforcement action.

- We will clearly distinguish between legal requirements and good practice/guidance aimed at improvements above minimum standards
- Provide advice to support compliance that can be relied upon
- Work collaboratively with other regulators where those regulated by more than one regulator are affected, and where there is disagreement over advice given, regulators will reach agreement.

The Council's Scheme of Delegation, which includes details of who is responsible for managing investigations and making decisions on enforcement action, can be provided in electronic or paper format upon request.

We will be accountable for the efficiency and effectiveness of our activities, while remaining independent in the decisions we take.

We shall provide businesses and individuals with effective consultation and opportunities for feedback on our service.

Officers will be courteous, fair and efficient at all times, and will identify themselves by name.

We will give consideration to fairness, individual's human rights and natural justice, in all aspects of our enforcement work.

We believe in openness and equality in the way we provide services to members of Rotherham's community and that every individual is entitled to dignity and respect.

When making enforcement decisions we aim to ensure that there will be no discrimination against any individual regardless of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status, or previous criminal conviction or caution which is not relevant to the current issue.

We understand that some members of the community may have specific requirements, which may need extra advice and assistance. Careful explanation will be given and if necessary the services of an interpreter may be used. Appropriate translated material will be arranged or practical help provided for people with impaired hearing, vision or other impairment.

Where the responsible person has failed to respond once a breach of legislation has been brought to their attention or the breach is so severe as to present an imminent risk, it is very likely that formal action will be initiated. Where legislation allows, and the Council has adopted powers, the responsible person will be charged a fee which reflects the officer time and ancillary costs involved with the preparation of a formal notice.

We will advise the responsible person of the potential of being charged for formal enforcement notices before any charge is incurred, unless the situation is an emergency. In emergency situations officers will make reasonable efforts to contact the responsible person. If the responsible person cannot be contacted or cannot respond quickly enough, formal action will be initiated and a charge made.

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 any business and/or individual concerned.
- (c) Any obstruction on the part of the offender.
- (d) The risks being controlled.
- (e) Statutory guidance.
- (f) Codes of Practice.
- (g) Any legal advice.
- (h) Policies and priorities of Government and the Council.
- (i) A person's age in relation to young people aged under 18.
- (j) The existence of a Primary Authority agreement.

Where the Council has enforcement and regulatory responsibility in relation to its own premises, the Council will enforce and legislate in accordance with legislation, procedures, and guidance. This will be consistent across all premises regardless of ownership. Where individuals are investigated who are also Council employees, or where they have known connections to the Council in any capacity, the investigation will be conducted in accordance with procedures developed to ensure that conflict of interest is minimised, and that the investigation is conducted in an open, honest and accountable manner. All individuals and business will be dealt with consistently, regardless of whether or not they have an interest in the Council.

Where the Council is successful in prosecution and a conviction of an individual or business is achieved, the Council, upon legal advice, will publish details of the offence, perpetrators and convictions in both electronic and paper publications. This would be done to have a deterrent effect and to make the public aware that the Council is taking effective enforcement action where it is necessary.

**4.2 *The action that the Council chooses to take depends upon the particular circumstances and the approach of the business or regulated person to deal with the breach.***

Those that deliberately or persistently fail to comply will be dealt with firmly by the Council.

Those regulated by the Council are able to request advice on non-compliance without directly triggering enforcement action, where they show a willingness to resolve the non-compliance, unless the matter is so serious that enforcement action is deemed necessary.<sup>6</sup>

**4.3 *The factors that influence the Council's response to breaches of the rules:***

The Council will choose proportionate approaches based on relevant factors.<sup>7</sup>

Where a Primary Authority exists, the Council will consult on responses to breaches.

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<sup>6</sup> Section 5.4, [Regulators' Code](#)

<sup>7</sup> Section 1.1, [Regulators' Code](#)

The Council will carry out check visits or re-visit to assess compliance where prior advice or guidance has been given, before considering further action.

Where the Council is aware of likely non-compliance where the enforcement powers are shared or with another agency, the Council will liaise with the relevant agency.

#### **4.4 Approach to complaints of non-compliance**

The Council will investigate all complaints of non-compliance.

### **5. Conduct of investigations**

#### **5.1 Processes for investigating alleged breaches**

All investigations relating to breaches of legislation that are within the powers of authorised officers within the Council will adhere to the legislative controls of how evidence is gathered and used, (see [Appendix B](#)).

The powers used by authorised officers are determined and restricted to those set out in the appropriate statute and/or Council's Delegation of Powers scheme which is available in electronic or paper format upon request.

When we have come to the decision to take enforcement action against you and:

- You are a business operating in more than one Local Authority area and you have chosen to have a registered Primary Authority Partnership under The Regulator Enforcement Sanctions Act 2008 (The RES Act); and
- The enforcement action we propose to take is covered by the definition of enforcement action for the purposes of Part 2 of The RES Act.

We will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify your Primary Authority of the action we propose to take.

Your Primary Authority has the right to object to our proposed action in which circumstances either they or we may refer the matter to BRDO.

Where any officer conducting regulatory or enforcement functions is obstructed in the course of their investigations, and legislation allows, formal action will be considered for obstruction offences.

Where legislation allows the seizure of equipment, articles, or items, the Council will adhere to legislation, guidance and specific policies in relation to those seizures.

Certain offences which are indictable, carrying a penalty of 12 months imprisonment or more, also carry provision for arrest in accordance with the Serious Organised Crime and Police Act 2005. Where necessary, we may request South Yorkshire Police exercise their powers of arrest.

Where it is believed that an offence has been committed, the Council will endeavour to interview where appropriate alleged perpetrators in accordance with the Police and Criminal Evidence Act 1984 and related guidance.

Legislation utilised by regulatory and enforcement officers, is often subject to statutory time limits for investigations from the point of discovery or commission of the offence. In all circumstances the Council will abide by these limitations when conducting investigations and when considering any subsequent enforcement actions.

Levels of authorisation are detailed within the Council's Scheme of Delegation, which is available upon request. Within the Scheme of Delegation there is provision for levels of authorisations for certain enforcement actions such as prohibitions, seizures and works in default, which will require case review prior to authorisation.

All prosecution work, including those which result in appearances at Licensing Board, are subject to case review through the line management arrangements prior to authorisation at section head level. These arrangements are laid out in function specific procedures.

## **5.2 *We will keep alleged offenders and witnesses informed of the progress of investigations***

## **6. Decisions on enforcement action**

### **6.1 *There are a range of actions that are available to the Council which are set out in legislation.***

For the purposes of this policy, formal enforcement action, includes, (see [Appendix C](#)).

- a) Compliance Advice, Guidance and Support;
- b) Voluntary Undertakings;
- c) Statutory (Legal) Notices;
- d) Financial penalties;
- e) Injunctive Actions / Enforcement Orders etc;
- f) Simple Caution;
- g) Prosecution; and
- h) Refusal / Suspension / Revocation of Licences

Where appropriate we will also take into consideration additional guidance and codes of practice, including service specific policies and procedures.

### **6.2 *How decisions are made on enforcement action***

We recognise that most businesses and individuals strive to comply with the law, however, firm action will be taken against those who flout the law or act irresponsibly.

We will carry out all of our enforcement duties, including taking formal enforcement action, in a fair, equitable and consistent manner. Whilst officers exercise judgement in individual cases, we will have arrangements in place to promote consistency including liaison with other agencies and authorities.

Formal enforcement action will generally only be considered and taken in the first instance in cases where individuals have sought to obtain an unfair commercial advantage, intentional exploitation, unacceptable risk to public, environment or

animal health, safety or welfare, or other such situations that are considered to be so serious as to warrant formal action.

Formal enforcement action will also be considered and may be taken where advice has been ignored.

Where formal enforcement action is necessary, we will consider the most appropriate course of action (from the range of sanctions and penalties available) with the intention of:-

- Aiming to secure public safety
- Aiming to change the behaviour of the offender
- Aiming to eliminate any financial gain or benefit from non-compliance
- Being responsive and considering what is appropriate for the particular offender and issue involved, including punishment and the public stigma that may be associated with a criminal conviction.
- Being proportionate to the nature of the offence and harm caused
- Aiming to restore the harm caused by non-compliance
- Aiming to deter future non-compliance.

Before formal enforcement action is taken:

- Where appropriate there will be an opportunity to discuss the circumstances of the case, unless immediate action is required e.g. to prevent the destruction of evidence or there is an imminent risk to the environment or health and safety. This discussion will usually follow an interview under caution if a prosecution is being considered.
- Where immediate formal enforcement action is taken, which will usually be the service of a written notice, reasons for such action will be given at the time (if possible) and confirmed in writing within 10 working days.
- Where there are rights of appeal against formal enforcement action, notification of the appeal mechanism will be clearly set out in writing at the time the action is taken.

- Clear reasons will be given for any formal enforcement action taken, and confirmed in writing.
- Risk presented from the non-compliance.<sup>8</sup>

Where the responsible person has failed to respond once a breach of legislation has been brought to their attention or the breach is so severe as to present an imminent risk, it is very likely that formal action will be initiated. Where legislation allows, and the Council has adopted powers, the responsible person will be charged a fee which reflects the officer time and ancillary costs involved with the preparation of a formal notice.

We will advise the responsible person of the potential of being charged for formal enforcement notices before any charge is incurred, unless the situation is an emergency. In emergency situations officers will make reasonable efforts to contact the responsible person. If the responsible person cannot be contacted or cannot respond quickly enough, formal action will be initiated and a charge made.

The decision to instigate legal proceedings will be determined by a number of factors, including:

- The seriousness of the alleged offence
- The history of the party concerned
- The willingness of the business or the individual to prevent a recurrence of the problem and to co-operate with officers
- Whether it is in the public interest to prosecute
- Whether there is a realistic prospect of conviction
- Whether any other action (including other means of formal enforcement action) would be more appropriate or effective
- The views of any complainant and other persons with an interest in prosecution.

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<sup>8</sup> Section 3.2, [Regulators' Code](#)

These factors are NOT listed in order of significance. The rating of the various factors will vary with each situation under consideration.

We will, where appropriate, cooperate and coordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wide geographical area beyond the Borough boundaries, or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

Where the law allows regulation and enforcement will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

- (a) Government Agencies.
- (b) Police Forces.
- (c) Fire Authorities.
- (d) Statutory undertakers.
- (e) Other Local Authorities.

All regulatory and enforcement actions are subject to review and monitor at varying line management level dependent upon the action being considered. The degree of scrutiny will depend upon the action being taken and will vary accordingly between established Performance Management Frameworks, through to scrutiny by the Head of Function.

### **6.3 *How decisions are communicated to those affected***

Decisions on enforcement actions will be provided in a timely explanation in writing, which will include any rights to representation or rights to appeal, and practical information on the process involved.

## **7. Review of this policy**

### ***7.1 When and how the policy will be reviewed***

Before the Council changes policies that effect regulatory and enforcement functions, the Council will consider as part of its process any potential impacts on businesses. Where there is a perceived significant change of impact then business will be consulted in relation to the changes of policy.<sup>9</sup>

Policies will be reviewed where feedback indicates that improvements or changes may be necessary, or where legislative changes require consideration of policy change, including those policies which are statutorily required.

## **8. Comments and Complaints**

### ***8.1 Details of processes for complaints and appeals***

The Council will provide a clearly explained complaints procedure allowing those that are regulated to easily make complaints about the conduct of the regulator, including appeal against a regulatory decision or failure to act in accordance with the Regulators' Code. All complaints about the services offered by the Council will be dealt with in accordance with the Council's formal complaints procedure. An information leaflet, which explains the process, is available at all Council offices, and is available in electronic or paper format upon request.<sup>10</sup>

Methods of appeal against regulatory decisions or failure to abide by the Regulators' Code, will be clear, impartial, timely, written, and publicised with those regulated against. Officers who took the decision or action against which an appeal is made will not be involved in considering the appeal.

### ***8.2 Contact details for comments or complaints about the policy, or the conduct of local authority staff can be made as follows:***

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<sup>9</sup> Section 2.1, [Regulators' Code](#) requires regulators, before changing policies, practices or service standards, to consider the impact on business and to engage with business representatives.

<sup>10</sup> Section 2.3, [Regulators' Code](#)

RMBC General Enforcement Policy

**Telephone:** 01709 382121  
**Email:** [customerservices@rotherham.gov.uk](mailto:customerservices@rotherham.gov.uk)  
**Web:** <https://www.rotherham.gov.uk>  
**By post or in person:** Rotherham Metropolitan Borough Council,  
Customer Services, Riverside House, Main Street,  
Rotherham, South Yorkshire, S60 1AE

**Opening Times:** Monday to Friday, 8.30am to 5.30pm

## **Appendix A: Legislation, Guidance and Codes that Influenced the Preparation of the Enforcement Policy**

### **A. Principles of Good Regulation**

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function.<sup>11</sup> For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services.

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities.
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

### **B. Regulators' Code**

The Council has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

### **C. Human Rights Act 1998**

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<sup>11</sup> Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at [www.legislation.gov.uk](http://www.legislation.gov.uk)

The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

#### **D. Data Protection Act 1998**

Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

#### **E. The Code for Crown Prosecutors**

When deciding whether to prosecute, the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a 'realistic prospect of conviction' against each alleged offender.

b. Public Interest Test - is it in the public interest for the case to be brought to court?

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in [Appendix C](#).

#### **F. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')**

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

## **Appendix B: Conduct of Investigations**

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

## **Appendix C: Enforcement Actions available to the Council in Respect of Criminal and Civil breaches**

### **A. Compliance Advice, Guidance and Support**

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

The Council recognises that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and the Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

### **B. Voluntary Undertakings**

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

### **C. Statutory (Legal) Notices**

In respect of many breaches the Council has powers to issue statutory notices. These include: 'Abatement Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to

comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

#### **D. Financial penalties**

The Council has powers to issue fixed penalty notices in respect of some breaches. 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 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 fixed penalty notice.

#### **E. Injunctive Actions, Enforcement Orders etc.**

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the

breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

## **F. Simple Caution**

The Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious criminal offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council will consider prosecution.

A simple caution for a criminal offence will appear on the offender's criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

## **G. Prosecution**

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute, the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- a) Seriousness of the offence committed
- b) The level of culpability of the suspect
- c) The circumstances of, and the harm caused to the victim?
- d) Was the suspect under the age of 18 at the time of the offence?
- e) What is the impact on the community?
- f) Is prosecution a proportionate response?
- g) Do sources of information require protecting?

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

## **H. Refusal/Suspension/Revocation of Licences**

The Council issues a number of licences and permits. The Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, the Council may take previous breaches and enforcement action into account.

**What you can expect from Rotherham Metropolitan Borough Council’s Enforcement and Regulatory Services (Service Standards)**

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This document explains what you can expect of regulatory and enforcement services in Rotherham. Whether you are run a business, are an employee or a member of the public, we are committed to providing you with an efficient, courteous and helpful service and this document tells you how we aim to do that and what standards we will meet.

**1. Areas we regulate**

We deliver services in a number of areas:

<b>Environmental Protection</b>	<b>Trading Standards</b>	<b>Food Safety</b>
<b>Public Health</b>	<b>Licensing</b>	<b>Private Sector Housing</b>
<b>Health and safety</b>	<b>Parking</b>	<b>Highways</b>
<b>Animal Health</b>	<b>Dog Control</b>	<b>Green Spaces</b>
<b>Waste Management</b>	<b>Enviro-Crime</b>	<b>Street Cleansing</b>

## 2. How we deliver our services

We make a fundamental contribution to the maintenance and improvement of public health, quality of life and wellbeing. Our aims are to:

- Protect the public, businesses and the environment from harm
- Support the local economy to grow and prosper

We determine our activities by assessing the needs of local people and our business community, and considering the risks that require addressing. We do this through customer satisfaction surveys, feedback from customers, interaction with business and public and through using data and other information available to us and our partners. In this way we ensure our resources are targeted appropriately, in the light of these local needs and of national priorities.

Details of our current work programme are available on request either electronically or in paper copy.

We are committed to being transparent in our activities. We measure what is important and we publish a range of information about our performance data so that you can see how we are doing. This is available on request either electronically or in paper copy.

We carry out all our activities in a way that supports those we regulate to comply and grow:

- We ensure that information, guidance and advice is available to help you to meet legal requirements, (see [Helping you to get it right](#)).
- We carry out inspections and other activities to check compliance with legal requirements, and we target these checks where we believe they are most needed, (see [Inspections and other compliance visits](#)).
- We deal proportionately with breaches of the law as set out in our Enforcement Policy, including taking firm enforcement action when necessary, (see [Responding to non-compliance](#)).

- We provide a range of services to businesses, including Environmental Permitting, Food Premises Registration, Alcohol and Entertainment Licensing, Houses in Multiple Occupation Licensing, and Parking Services, (see [Requests for our service](#)).

Our services will be delivered in accordance with the requirements of the [Regulators' Code](#).

### **3. Working with you**

In all your dealings with us you can expect, and will receive, an efficient and professional service. Our officers will:

- Be courteous and polite
- Always identify themselves by name in dealings with you, and provide you with contact details. The exception to this are Civil Enforcement Officers undertaking parking enforcement, who under provisions in the Traffic Management Act Guidance for Local Authorities, should only be identified by their individual officer number.
- Seek to gain an understanding of how your business operates
- Provide details of how to discuss any concerns you may have
- Agree timescales, expectations and preferred methods of communication with you
- Ensure that you are kept informed of progress on any outstanding issues.

We recognise that your business will receive advice and inspections from other organisations, and we will do our best to work with them to ensure that you receive the best service.

#### ***Helping you to get it right***

We want to work with you to help your business to be compliant and successful and it is important to us that you feel able to come to us for advice when you need it. We won't take enforcement action just because you tell us that you have a problem.

We make information and guidance on meeting legal requirements available on request either electronically or in paper copy.

Where you need advice that is tailored to your particular needs and circumstances we will:

- Discuss with you what is required to achieve compliance
- Provide advice that supports compliance and that can be relied on
- Provide clear advice that can be easily understood and implemented
- Distinguish legal requirements from suggested good practice
- Ensure that any verbal advice you receive is confirmed in writing if requested
- Acknowledge good practice and compliance
- For some services there are charges made; these charges are agreed annually by the Council and publicised

### ***Inspections and other compliance visits***

We monitor and support compliance in a number of different ways including through inspections, sampling visits, test purchases, advisory visits and complaint investigations. These visits will always be based on an assessment of risk – we won't visit without a reason.

We will give you notice that we intend to visit unless we have specific reason to believe that an unannounced visit is more appropriate.

When we visit you our officers will:

- Explain the reason and purpose of the visit
- Carry their identification card at all times, and present it on request when visiting your premises
- Exercise discretion in front of your customers and staff
- Have regard to your approach to compliance, and use this information to inform future interactions with you
- Provide information, guidance and advice to support you in meeting your statutory obligations, if required
- Provide a written record of the visit.

The Council will allocate resources to where they will be most effective by assessing the priority risks:

- Risk will be considered at every stage when making a decision, including the most appropriate intervention, the way of working, checks on compliance, and when taking enforcement action.
- Assessment of risk will recognise previous compliance history and all available relevant data including relevant external verification.
- Where risk assessment frameworks are designed or reviewed consultation will be carried out with those affected. This approach will cover a range of regulatory activity.
- The effectiveness of regulatory activities and outcomes will be reviewed regularly and adjusted accordingly.

### ***Responding to non-compliance***

Where we identify any failure to meet legal obligations, we will respond proportionately, taking account of the circumstances, in line with our Enforcement Policy.

We deal proportionately with breaches of the law as set out in our Enforcement Policy, which is available on request either electronically or in paper copy, including taking firm enforcement action when necessary

Where we require you to take action to remedy any failings we will:

- Explain the nature of the non-compliance
- Discuss what is required to achieve compliance, taking into account your circumstances
- Clearly explain any advice, actions required or decisions that we have taken
- Agree timescales that are acceptable to both you and us, in relation to any actions required
- Provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights to appeal
- Explain what will happen next
- Keep in touch with you, where required, until the matter is resolved

#### 4. Requests for our services

We clearly explain the services that we offer, including details of any fees and charges that apply which are available on request either electronically or in paper copy.

In responding to requests for our services, including requests for advice and complaints about breaches of the law, we will:

- Respond to your request within a maximum of 10 working days (this varies within services and compliance activity)
- Tell you when you can expect a substantive response
- Seek to fully understand the nature of your request
- Explain what we may or may not be able to do, so that you know what to expect
- Keep you informed of progress throughout our involvement
- Inform you of the outcome as appropriate

A detailed breakdown of our response times and expected resolution times is available on request either electronically or in paper copy. However, please be aware that our officers will exercise their judgment to determine whether a more prompt response is required.

#### How to contact us

You can contact us by:

- Telephone:** 01709 382121
- Email:** [customerservices@rotherham.gov.uk](mailto:customerservices@rotherham.gov.uk)
- Web:** <https://www.rotherham.gov.uk>
- By post or in person:** Rotherham Metropolitan Borough Council, Customer Services, Riverside House, Main Street, Rotherham, South Yorkshire, S60 1AE

## **6. Opening Times:**

Normal working hours are Monday to Friday 8.30 to 5.30pm, however, in response to the working hours of businesses and from information relating to activity and any indicated concerns, we will also have officers to work at times outside the above core hours to aid compliance and enforcement of standards.

We will seek to work with you in the most appropriate way to meet your individual needs. We can make information available in different formats, and have access to translation and interpretation services.

If you contact us we will ask you for your name and contact details to enable us to keep in touch with you as the matter progresses. We treat all contact with the service in confidence unless you have given us permission to share your details with others as part of the matter we are dealing with on your behalf or there is an operational or legal reason why we need to do so. We will respond to anonymous complaints and enquiries where we judge it appropriate to do so.

Personal data will be managed in accordance with the Council's Data Protection Policy (available on request either electronically or in paper copy).

## **7. Our Teams**

We have a dedicated team of officers who have the appropriate qualifications, skills and experience to deliver the services provided. We have arrangements in place to ensure the ongoing professional competency of all officers.

Where specialist knowledge is required in an area outside of our expertise we have arrangements in place, with both neighbouring authorities and other regulatory organisations, to call on additional resources as necessary.

## **8. Working with others**

We work closely with other council services such as Planning and Economic Development and our aim is to provide a streamlined service to you.

We are part of a much wider regulatory system within the Borough of Rotherham. We have good working relationships with other regulators such as South Yorkshire Police, South Yorkshire Fire Service, Health and Safety Executive, and the

Environment Agency, and this enables us to deliver a more joined up and consistent service. This includes sharing information and data on compliance and risk, where the law allows, targeting regulatory resources.

Our officers are familiar with the work of our partners and can signpost you to the advice and guidance you need. We are members of the Safer Rotherham Partnership, Yorkshire and Humberside Pollution Advisory Council (YAHPAC), Health and Safety Executive and if you have any comments or concerns regarding the way in which the local regulatory system is operating you can contact the partnership by contact the Council as above.

## **9. Having your say**

### ***Complaints and appeals***

Where we take enforcement action, there is often a statutory right to appeal. We will always tell you about this at the appropriate time.

We are always willing to discuss with you the reasons why we have acted in a particular way, or asked you to act in a particular way. You can contact the named officer that is dealing with your case, or ask to speak to the officer's line manager.

We manage complaints about our service, or about the conduct of our officers, through the Council's Corporate Complaints Policy. Details can be found at [http://www.rotherham.gov.uk/info/200025/complaints/516/complain\\_about\\_council\\_services](http://www.rotherham.gov.uk/info/200025/complaints/516/complain_about_council_services) or by telephone 01709 382121

### ***Feedback***

We value input from you to help us ensure our service is meeting your needs. We would like to hear from you whether your experience of us has been good or in need of improvement. This helps us to ensure we keep doing the right things and make changes where we need to. We use customer satisfaction surveys from time to time but we would welcome your feedback at any time. You can provide feedback in the following ways:

**Telephone:** 01709 382121

**Email:** [customerservices@rotherham.gov.uk](mailto:customerservices@rotherham.gov.uk)

**Web:** <https://www.rotherham.gov.uk>

**By post or in person:** Rotherham Metropolitan Borough Council, Customer Services, Riverside House, Main Street, Rotherham, South Yorkshire, S60 1AE

**Opening Times:** Monday to Friday, 8.30am to 5.30pm

Any feedback that we receive will be acknowledged, considered and responded to.

***Developing our services with you***

We have a number of groups that we consult with to ensure that we are delivering our services to meet your needs. We are always happy to welcome new members to these groups.