

Rotherham Metropolitan Borough Council

Statement of General Enforcement Policy

**THIS DOCUMENT IS CURRENTLY UNDER SEPARATE
REVIEW AND WILL BE INSERTED INTO THIS POLICY
ONCE THE REVIEW IS COMPLETE**

THE GENERAL ENFORCEMENT POLICY IS THE SUBJECT OF SEPARATE CONSULTATION AHEAD OF COUNCIL ADOPTION. ONCE COMPLETED IT WILL BE INCLUDED AS "APPENDIX R" OF THE HACKNEY CARRIAGE & PRIVATE HIRE LICENSING POLICY

This document is the General 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.

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 with 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.

1. Introduction

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

2. Overall Statement

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.

3. The Principles We Will Work To With Those We Regulate

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, and
- **Targeted** – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

3.1 Supporting those that are regulated

The Council will avoid imposing unnecessary regulatory burden, 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.

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

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

3.2 Engagement with those regulated

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.

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.

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.

The Council will provide a clearly explained complaints procedure allowing those that are regulated to easily make complaints about the conduct of the regulator. 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

3.3 Risk based enforcement

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 the Council develops a risk assessment framework, those affected by it will be consulted on the design.

The effectiveness of regulatory activities and outcomes will be reviewed regularly and adjusted accordingly.

3.4 Advice and Guidance

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.
- 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.

3.5 Transparency

A clear set of service standards will be published with clear information on:

- How the Council communicates with those they regulate.
- The Council's approach to providing information, guidance and advice.
- The Council's approach to checks on compliance, including risk based assessment used for targeting and protocols for conduct.
- The enforcement policy explaining how the Council responds to non-compliance

- Fees and charges
- How to comment or complain about the service provided and the routes to appeal.

The Council will publish information on the website that is easily accessible to meet the provisions of the Regulators' Code, and will ensure that it is kept up to date.

The Council has mechanisms in place to ensure that officers act in accordance with service standards.

The Council will regularly publish details of their performance against service standards, feedback from those regulated, customer satisfaction surveys, data relating to complaints, and appeals against their decisions.

4. General Principles

4.1 Inspections and Other Visits

All inspections and other visits to those regulated will be undertaken according to the level of risk presented, with resources being directed towards those that demonstrate the highest risk. Additional intelligence sources will also be used (for example complaints received) that may trigger a visit / inspection.

Where we carry out inspections we will give feedback to those regulated on what the officer has found; this will include positive feedback to encourage and reinforce good practice.

Where practicable we will co-ordinate inspections with other regulators to minimise the burden on businesses.

Random inspection will be undertaken where government guidelines require us to do so. A small amount of random inspection may also be undertaken to test our risk assessments or the effectiveness of any action we have taken.

4.2 Information Requirements

We will only ask those regulated for information that is necessary after considering the cost to the business, and the benefit of obtaining the information.

Where possible we will share this information with our partners (taking account of data protection controls) to prevent the need for providing the information more than once.

4.3 Compliance and Enforcement Actions

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 in 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.

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, 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.

For the purposes of this policy 'formal enforcement action' includes the serving of statutory notices, the seizure of goods, carrying out works in default, the seeking of an injunction, direct intervention to remove sources of danger, and the instigation of legal proceedings. Where appropriate we will also take into consideration additional guidance and codes of practice, including service specific policies and procedures.

The decision to instigate legal proceedings will be determined 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 cooperate with officers
- Whether it is in the public interest to prosecute
- The 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.

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

5. **Accountability**

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

We will 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.

6. **Equalities**

We will give consideration to fairness, individual's human rights and to 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 will 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.

7. Application of our enforcement policy

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 head of service before a final decision is taken. This proviso 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.

8. Review

This document will be subject to an annual review with additional reviews as and when required. Improvements will be made if there are any changes in legislation or in local needs.

If you have any comments please contact the Director of Housing and Neighbourhood Services by writing to The Director of Housing and Neighbourhood Services, Riverside House, Floor 2 Wing A, Main Street, Rotherham, S60 1AE or email to env.health@rotherham.gov.uk