

## **Appendix 1 - General Enforcement Policy**

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## 1. INTRODUCTION

1. This document is the General Enforcement Policy for Rotherham Metropolitan Borough Council. The document shows transparency, consistency and proportionality. It explains the main ideas officers follow to make sure everyone complies with the Council legislation. The policy conforms to the Regulators' Code (Better Regulation Delivery Office [BRDO]) April 2014. There are other, specific rules for different services such as those listed in Appendix C, but this explains the main ideas.
2. Our primary purpose is to ensure regulatory compliance and enforcement which protects the public. The Council will deliver well organised and consistent work focused by risk assessment. The Council will make sure everyone follows the rules. We will focus on the most important things to keep everyone safe. This will provide a positive approach to those regulated and achieve compliance.
3. The Council's Corporate Priorities are to provide protection from harm for individuals and the environment. This enables businesses to flourish without unnecessary burden of inspection and regulation. This improves the health and wellbeing of those living, working and visiting the Borough.
4. The Council will carry out good enforcement practice. We ensure that we adhere to the current legislation, guidance, and codes of practice, that influence this policy (see Appendix A).
5. The Council will maintain good standards and conditions that impact on the environments of all who live, work and visit Rotherham.
6. The Council is committed to good enforcement practice and adherence to the current legislation (see [Appendix A](#)).
7. The Council will exercise our regulatory activities in a way which is
  - Proportionate – our activities will reflect the level of risk to the public,
  - Accountable – our activities will be open to public scrutiny.
  - Consistent – our advice to those regulated will be robust, reliable and similarly advice provided by others will be respected.
  - Transparent – those regulated will be advised appropriately so they can understand what is expected of them and what they can expect in return.
  - Targeted – resources will be focused on higher risk enterprises and activities, reflecting local need and national priorities.
8. The Council will avoid imposing unnecessary regulatory burdens, and policies. Procedures and practices will consider supporting or enabling economic growth by considering economic impacts. We will also consider costs of compliance with a view to improving confidence in compliance of those regulated and encouraging compliance.
9. The Council will ensure that regulatory officers have the knowledge and skills to:
  - Understand the principles of protecting the public
  - Support those that they regulate
  - Understand those they regulate

- Understand the statutory principles of good regulation and how activities are delivered under the Code.
10. The Policy will be published on the internet. Relevant 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

1. This policy will ensure public protection, legal compliance and set the framework which officers of the Council will operate.
2. 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 considered by the Director of service before a final decision is made.
3. This provision will not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made. The Chief Executive may suspend any part of this policy, in cases of emergency. This would 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. The Regulators' Code requires regulators to have procedures in place to ensure that their officers follow their published service standards.

## 3. APPLICATION OF THE POLICY

1. The Enforcement Policy relates to those enforcement and regulatory functions discharged by the Council's Regeneration and Environment Directorates' Community Safety and Streetscene Department
2. The Policy does not cover the 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. This can be found within the schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007.
3. By using effective procedures and clear policies, it standardises regulation and enforcement.
4. Regulation and enforcement's primary function is to achieve regulatory compliance. This is to protect the public, legitimate business, the environment and groups such as consumers and workers. The Council prioritises achieving compliance through education and support. The Council reserves the right to take enforcement action even after initial compliance is achieved.
5. Officers will refer the matter to the relevant agency for offences or potential offences if they are outside of the legislative remit of this General Enforcement Policy. They will ensure that the issues are thoroughly investigated and feedback is provided to the complainant.

## 4. OUR APPROACH TO DEALING WITH NON-COMPLIANCE

The Council recognise that most businesses and individuals strive to follow the law, however, firm action will be taken against those who flout the law or act irresponsibly. Particular focus will be given to circumstances where the public's safety is compromised. Those that deliberately or persistently fail to comply will be dealt with 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. This is in accordance with Section 5.4 of the Regulators' Code.

The Council will review all notifications/complaints of non-compliance and will investigate if necessary. Necessity to investigate and the promptness of the response will be dependent on the resources available as well as identification of risk.

Where appropriate 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.

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

### ADVICE & GUIDANCE

1. The Council recognises that prevention is better than a cure. We will actively work with business and residents to provide advice on and help with compliance with the law. In doing this it will be ensured that:
  - Any information provided will be in clear, concise and accessible language. It will be confirmed in writing where necessary.
  - Legal requirements and good practice/guidance aimed at improvements above minimum standards will be clearly distinguished
  - 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, can be provided in electronic or paper format upon request. This includes details of who handles managing investigations.

## FEEDBACK & INFLUENCING

1. The Council will ensure that mechanisms are in place to allow those regulated, and the public, to express views, provide feedback. They can also contribute to the development of regulatory policies and service standards.
2. The Council will consider the impact on business, before changing policies and service standards.

## FAIRNESS

1. Officers will be courteous, fair and efficient at all times, and will identify themselves by name.
2. The Council will give consideration to fairness, individual's human rights and natural justice. This is in all aspects of our enforcement work.
3. The Council believes in openness and equality in the way services are provided. Every individual is entitled to dignity and respect.
4. The council will aim to ensure that there will be no discrimination against any individual when making enforcement decisions. This is regardless of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status,. This includes previous criminal convictions or caution which is not relevant to the current issue.

## CONFIDENTIALITY

1. It is normal practice to maintain the confidentiality of a complainant. Unless they agree to act as a witness in formal action taken by the Council, or the Council are required by law to disclose the identity of a complainant. Anonymous complaints will be acted upon and investigated appropriately.
2. Where any officer or member of the Council becomes aware of any concern in enforcement practice or compliance requirements. In the first instance, it should be escalated to their line manager. If this approach is not seen to be appropriate the issue should be raised with another manager. Legal notices will clearly set out the means by which the notice can be appealed, including timescales and relevant bodies to which the appeal can be lodged.
3. If complaints of treatment or officer conduct cannot be informally resolved between stakeholders, officers and line managers, the customer will be directed to the Council's formal complaints process.
4. The Council does operate a "whistleblowing policy"; the "Confidential Reporting Code". This ensures serious concerns can proceed confidentially.

## CHARGING FOR ENFORCEMENT

1. The Council will recover costs for taking enforcement action against the responsible persons, where legislation allows. These costs will be associated with administrative costs associated with preparation and serving of any notice.



2. The responsible person will be advised 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.

## NECESSARY AND PROPORTIONATE

1. The Council will choose proportionate approaches based on relevant factors.
2. In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things:
  1. Public protection and "risk to the public"
  2. The seriousness of the compliance failure.
  3. The past and current performance of any business and/or individual concerned.
  4. Any obstruction on the part of the offender.
  5. The risks being controlled.
  6. Statutory guidance.
  7. Codes of Practice.
  8. Any legal advice.
  9. Policies and priorities of Government and the Council.
  10. A person's circumstances
  11. The existence of a Primary Authority agreement

## COUNCIL INTERESTS

1. The Council will enforce under legislation, procedures, and guidance, where the council has enforcement and regulatory responsibility in relation to its own premises. This will be consistent across all premises regardless of ownership. If any council employees are investigated, the investigation will be conducted in accordance with procedures developed to ensure that conflict of interest is minimised. The investigation will be conducted in an open, honest and accountable manner. All individuals and business will be dealt with consistently, regardless of whether they have an interest in the Council

## PUBLICITY OF ENFORCEMENT

1. Where the Council;
  - is successful in prosecution and a conviction of an individual or business, or
  - has made an enforcement decision relating to licensed premises, vehicles, drivers and/or operators

it may, upon legal advice, 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.

**PRIMARY AUTHORITY & OTHER AGENCY ARRANGEMENTS**

1. Where a Primary Authority exists, the Council will consult on responses to breaches.
2. The council will liaise with the relevant agency if the Council is aware of likely non-compliance where the enforcement powers are shared or with another agency.
3. The Council has an Information Sharing Protocol in place through the Safer Rotherham Partnership. This allows the sharing of information with partners where allowed and appropriate.

**5. CONDUCT OF INVESTIGATIONS**

1. All investigations will be carried out under the following legislation. They will be 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
  - Criminal Justice Act 2003
  - the Human Rights Act 1998
2. These Acts and associated guidance control how evidence is collected. It is used to 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.
3. 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. This is available in electronic or paper format upon request.
4. 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.
5. 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.
6. Where necessary, the Council and its officers may request South Yorkshire Police exercise their powers of arrest in order to progress an investigation and/or apprehend an offender.
7. 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.
8. 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.
9. 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.

10. Before information is laid at Court or at function level boards such as Licensing Board, the case file, casework and all relevant evidence 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.
11. Alleged offenders and witnesses will be informed of the progress of investigations.

## 6. DECISIONS ON ENFORCEMENT ACTION

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

1. There are a range of actions that are available to the Council which are set out in legislation.
2. For the purposes of this policy, formal enforcement action, includes (see Appendix C):
  - Compliance Advice, Guidance and Support;
  - Voluntary Undertakings;
  - Statutory (Legal) Notices;
  - Financial penalties;
  - Injunctive Actions / Enforcement Orders etc;
  - Simple Caution;
  - Prosecution; and
  - Refusal / Suspension / Revocation of Licences
3. Alleged offenders and witnesses will be informed of the progress of investigations.

### HOW DECISION ARE MADE ON ENFORCEMENT ACTION

1. Where formal enforcement action is necessary, the most appropriate course of action (from the range of sanctions and penalties available) will be considered with the intention of:
  - protecting public safety
  - protecting the environment and animal etc welfare
  - changing the behaviour of the offender
  - eliminating 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
  - restoring the harm caused by non-compliance
  - deterring future non-compliance.
2. 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.
3. Before instigating legal proceedings service will consider many 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.
4. These factors are NOT listed in order of significance. The rating of the various factors will vary with each situation under consideration.
5. Where appropriate there will be cooperation and coordination with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.
6. 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.
7. Where the law allows regulation and enforcement will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including::
- Government Agencies.
  - Police Forces.
  - Fire Authorities.
  - Statutory undertakers.
  - Other Local Authorities.
8. When a 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 proposed is covered by the definition of enforcement action for the purposes of Part 2 of the RES Act

the Council will comply with the agreement provisions for enforcement and notify your Primary Authority of the proposed action. Your Primary Authority has the right to object to the Council's proposed action in which circumstances either they or the Council may refer the matter to BRDO.

9. Investigation Officers are required to escalate to their line manager all (suspected or actual) serious or complex incidents of non-compliance. This includes, and not exclusively, all non-compliance directly impacting on the safety of young and vulnerable persons.

## 7. ENFORCEMENT AND REGULATORY SERVICES (SERVICE STANDARDS)

Services will be delivered in accordance with the requirements of the Regulators' Code.

1. Whether a business, employee or a member of the public, the Council are committed to providing an efficient, courteous and helpful service. This section explains what standards can be expected of regulatory and enforcement services in Rotherham.
2. The enforcement services are delivered in a number of service areas:
  - Environmental Protection
  - Public Health
  - Food, Health and Safety
  - Animal Health
  - Waste Management
  - Trading Standards
  - Licensing
  - Parking
  - Dog Control
  - Environmental Crime
  - Safety at Sports Grounds
  - Private Sector Housing
  - Highways
  - Green Spaces
  - Street Cleansing.

### HOW SERVICES ARE DELIVERED

1. Each service will have robust Service Standards which underpin expectations of level of service to relevant stakeholders including the public.
2. Services will be delivered in accordance with the requirements of the Regulators' Code.
3. In all dealings with the Council enforcers and regulators it can be expected to receive an efficient and professional service. Our officers will:
  - Be courteous and polite
  - Always identify themselves by name, and provide 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 a business operates
  - Provide details of how to discuss any concerns there may be
  - Agree timescales, expectations and preferred methods of communication
  - Ensure that information and progress on any outstanding issues is provided.

## HELPING BUSINESSES AND INDIVIDUALS GET IT RIGHT

1. The Council wants to work with businesses and individuals to be compliant and successful. It is important that everyone feels able to contact for advice when it is needed. It does not follow that enforcement action will follow just because something is told to the Council.
2. Information and guidance to help make sure legal requirements are met are available on request either electronically or by paper copy.
3. When Council officers visit premises they will:
  - Explain the reason and purpose of the visit
  - Carry their identification card at all times, and present it on request when visiting; if they do not – ask to see it.
  - Exercise discretion in front of neighbours, and business customers & staff
  - Have regard to the business' or person's approach to compliance, and use this information to inform future interactions
  - Provide information, guidance and advice , if required, to support statutory obligations are met
  - Maintain a written record of the visit.
4. 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.

## COVERT SURVEILLANCE, INCLUDING THE USE OF SURVEILLANCE OF SOCIAL MEDIA

1. The Council use of surveillance powers are covered by the Regulation of Investigatory Powers Act 2000 (RIPA). The Council will only do this when it is necessary and proportionate to do so to prevent and detect serious crime. It is in accordance with the Council's RIPA Policy. This is authorised by the Court.
2. Investigating officers will seek legal advice where necessary and always act in accordance with the Council's RIPA Policy and appropriate guidance issued by the Home Office and Regulator. If investigators believe they need to look at someone's social media accounts closely for a case, they must get special approval first. This is in accordance with written departmental procedures. Such authorisation will ensure as far as possible that authorised officers act lawfully and in a fair and transparent manner.

## REQUESTS FOR OUR SERVICES

1. The services that the Council offer, including details of any fees and charges that apply, are available on request either electronically or in paper copy.
2. In responding to service requests, including requests for advice and complaints about breaches of the law, there will be:
  - Response to the request within a maximum of 10 working days (this varies within services and compliance activity)
  - Advise when a substantive response can be expected
  - Seek to fully understand the nature of the request
  - Explain what may or may not be possible, so that its clear what the customer can expect
  - Keep the person or business informed of progress throughout the Council's involvement
  - Keep the person or business informed of the outcome as appropriate
3. A detailed breakdown of both the response and expected resolution time is available on request either electronically or in paper copy. Please be aware that judgment will be made by officers to determine whether a more prompt response is required.
4. Notice that officers intend to visit will be provided. This is unless there is a specific reason to believe that an unannounced visit is more appropriate.
5. The Council's website provides information about all Council services. It can be found at [www.rotherham.gov.uk](http://www.rotherham.gov.uk) You can also contact us by contacting the Enforcement team, or by post or in person.

## OPENING TIMES

1. Most services are available Monday to Friday 8.30 to 5.00pm. More information will be available within service specific policies and standards. Officers will also work at times outside the above core hours to aid compliance and enforcement of standard. This includes the Community Protection and Environmental Health service, which operates a night a week out of hours service.
2. Officers will seek to work with any person or business in the most appropriate way to meet the individual need. Information is available in different formats, and officers have access to translation and interpretation services.
3. If you contact the Council your name and contact details will be taken to enable us to keep in touch as the matter progresses. All contacts with the service will be treated in confidence unless there has been permission to share details with others as part of the matter being dealt with or there is an operational or legal reason to do so. Anonymous complaints will be acted upon and investigated.
4. Personal data will be managed in accordance with the Council's Data Protection Policy. This is available on request either electronically or in paper copy.

## OUR TEAMS

1. There is a dedicated team of officers who have the appropriate qualifications, skills and experience to deliver the services provided. Arrangements are in place to ensure the ongoing professional competency of all officers.
2. Where specialist knowledge is required in an area outside of the Council's expertise, arrangements can be made. This may be with both neighbouring authorities and other regulatory organisations. They may be needed to call on additional resources if necessary.

## WORKING WITH OTHERS

1. The Council's aim is for all Council services work together so a streamlined service is provided.
2. Council officers are familiar with the work of our partners and can signpost you to the advice and guidance you need. The Council is a member of the Safer Rotherham Partnership, Health and Safety Executive. 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.
3. Our services work in conjunction with various partners at a local and national level. This in order to ensure consistency, effective and lawful information sharing and to keep on top of regulatory and legislative updates.

## INFORMATION SHARING

1. The Council has information sharing protocols with various partners including the Police. This is to detect and deter crime and anti-social behaviour. The Council is committed to the objectives of this partnership. They will balance data protection considerations in line with the information sharing protocol.

## 8. REVIEW OF THIS POLICY

1. The council will consider any potential impacts on businesses before the Council changes any policies that affect regulatory and enforcement functions. Where there is a perceived significant change of impact then business will be consulted in relation to the changes of policy. Before changing policies or service standards, the impact on businesses will be considered. We will engage with business representatives. This is as per Section 2.1 of the Regulators' Code.
2. Policies will be reviewed if feedback indicates that improvements may be necessary, or where legislative changes require consideration of policy change. This includes those policies which are statutorily required.

## 9. COMMENTS AND COMPLAINTS

1. Feedback helps ensure our services meets the needs of the Council's customers so that there can be learning to bring improvements. All views are welcomed whether they be good or whether they suggest improvement is



needed. Customer satisfaction surveys, from time to time, are used but feedback can be made at any time.

2. The Council will provide a clearly explained complaints procedure. This will allow 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 is available at all Council offices. This is available in electronic or paper format upon request in accordance with section 2.3 of the Regulators' Code.
3. There is a willingness to discuss with you the reasons why there has been a particular course of action or why you may have been 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.

## APPENDIX A: LEGISLATION, GUIDANCE, AND CODES

1. 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. This is specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007. For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services.

The Council 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 regulated will be robust, reliable and similarly advice provided by others will be respected. Where circumstances are similar, a consistent, if possible, approach/action to other local authorities will be followed.
  - Transparent – those regulated will be advised appropriately so as to understand what is expected of them and what they can anticipate in return.
  - Targeted – resources will be focused on higher risk enterprises and activities, reflecting local need and national priorities.
2. Regulators' Code. The Council has had regard to the Regulators' Code in the preparation of this policy. In certain instances it may be concluded that a provision in the Code is either not relevant or is outweighed by another provision. It will be ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
  3. Human Rights Act 1998. The Council is a public authority for the purposes of the Human Rights Act 1998. The principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms will be applied. 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.
4. Data Protection Act 1998. Where there is a need for the Council to share enforcement information with other agencies, the provisions of the Data Protection Act 1998 will be followed.
  5. 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':
      - 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. There must be enough evidence to provide a 'realistic prospect of conviction' against each alleged offender
      - 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 will be taken into account are detailed under the enforcement options available to us in Appendix C.
  6. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act'). The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. The requirements of the Act will be complied with when enforcement action against any business or organisation that has a primary authority is being considered, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

## **APPENDIX B: ENFORCEMENT ACTIONS AVAILABLE TO THE COUNCIL IN RESPECT OF CRIMINAL AND CIVIL BREACHES**

1. 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. 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.

2. 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.
3. 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.
4. Financial penalties - The Council has powers to issue fixed penalty notices, penalty charge notices and monetary penalties in respect of some breaches of legislation. A fixed penalty notice, penalty charge notice or monetary penalty is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty, penalty charge notice or monetary penalty is not paid, the Council may, however, commence criminal proceedings or take other enforcement action in respect of the breach or take civil enforcement action to recover the value of the fixed penalty, penalty charge or monetary penalty subject to the provisions of the relevant legislation. If a fixed penalty, penalty charge notice or monetary penalty is paid in respect of a breach, the Council will not take any further enforcement action in respect of that breach. Payment of the penalty does not provide immunity from prosecution in respect of similar, continuing or recurrent breaches. The Council is only able to issue a fixed penalty notices, penalty charge notices and monetary penalties 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. In specific instances dictated by regulation, the Council has powers to issue monetary penalties. In some cases the Council has discretion in the level of monetary penalty to impose. Where regulation makes provision for the Council to receive representations in respect of a charge, the Council will inform recipients how to make representation and provide guidance on what might be relevant issues. Any representation received will be reviewed in a timely manner within the terms of the regulation, the requirements of this policy and based on the reasonableness of the charge on a case by case basis. If the Council deems fit it may confirm, vary or quash a monetary penalty.

5. 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. The Council may seek Banning Orders where relevant convictions exist and it is appropriate and proportionate to do so.
6. Prosecution - 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:
  - Seriousness of the offence committed
  - The level of culpability of the suspect
  - The circumstances of, and the harm caused to the victim?
  - Was the suspect under the age of 18 at the time of the offence?
  - What is the impact on the community?
  - Is prosecution a proportionate response?
  - 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.

7. 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 and public safety is assured. 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 and also other matters which, on the balance of probability, may influence the assessment of a person to be a fit and proper person.
8. Prohibitions - The Council has a range of powers that allow for the prohibition of activities, structures, or use of facilities such as sports grounds. The Council has a role to ensure the safety of the public and will exercise



prohibition powers only where it is essential to protect health and there is sufficient evidence available to demonstrate that a risk to health exists.

## **APPENDIX C**

While this document acts as an over-arching policy for the Council, reference must also be given to service function specific policies, including but not limited to:

- Anti-Social Behaviour Policy
- Banning Order Policy
- Food Safety Enforcement Policy
- Food Standards Agency Code of Practice
- Food Hygiene Rating Scheme Brand Standard
- Health & Safety Executive Enforcement Policy Statement
- Overt CCTV Policy
- Policy for the Use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004
- Rotherham Council RIPA Policy
- Safer Rotherham Partnership Information Sharing Protocol