

Rotherham Metropolitan Borough Council

General Enforcement Policy

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1. Introduction

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

- 1.1 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 the Council enforces. 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.
- 1.2 The Policy was formally agreed by Cabinet in September 2019
- 1.3 Our primary purpose is to ensure regulatory compliance and enforcement protects the public. To do this the Council will deliver of efficient, targeted and proportionate regulatory services focused by risk assessment to provide a positive approach to those regulated and compliance.
- 1.4 The Council's Corporate Priorities are supported by providing protection from harm for individuals and the environment, enabling businesses to flourish

without unnecessary burden of inspection and regulation, and improving the health and wellbeing of those within the Borough.

- 1.5 The Council and its officers will 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.
- 1.6 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](#)).
- 1.7 The Council will exercise our regulatory activities in a way which is:
 - **Proportionate** – our activities will reflect the level of risk to the public 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.
- 1.8 The Council will avoid imposing unnecessary regulatory burdens, and policies, procedures and practices will consider supporting or enabling economic growth by considering economic impacts and costs of compliance with a view to improving confidence in compliance of those regulated and encouraging compliance.¹
- 1.9 The Council will ensure that regulatory officers have the necessary 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 in accordance with the Code.
- 1.10 This Enforcement Policy has been developed following review of the previous General Enforcement Policy in light of the Regulators Code. Extensive consultation in the development of this Policy took place in January and February 2015. Further consultation was undertaken following several

¹ Section 1.1, [Regulators' Code](#)

amendments to the policy in August 2018, and as part of the latest amendments to the policy in September 2019.²

- 1.11 The Policy will be published on the internet, 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

The General Enforcement Policy details Rotherham Council's policy in respect of its approach to dealing with non-compliance of regulatory and statutory provisions by businesses and members of the public.

- 2.1 In working to the Policy its purpose will ensure public protection, legal compliance and set the framework within which officers of the Council will operate, enforce and ensure regulatory compliance.
- 2.2 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 fully considered by the Assistant Director, Community Safety and Street Scene before a final decision is taken.
- 2.3 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.³

3. Application of the Policy

Scope of the policy, and service areas referred to

- 3.1 This document sets out what business and others being regulated can expect from the Council's regulation, enforcement, and officers.
- 3.2 The Enforcement Policy relates to those enforcement and regulatory functions discharged by the Council's Regeneration and Environment Directorate's Community Safety and Street Scene Service.
- 3.3 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.

² 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.

³ 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.

- 3.4 It commits regulation and enforcement services to good enforcement practice with effective procedures and clear policies.
- 3.5 Regulation and enforcement services' 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, the Council 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.
- 3.6 Where offences or potential offences are suspected that are outside of the legislative remit of this General Enforcement Policy, officers will refer the matter to the relevant agency (including other Council services), and ensure that through influence and/or escalation that the issues are thoroughly investigated and satisfactory feedback provided to the Council.
- 3.7 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 The Council 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. Particular focus will be given to circumstances where the public's safety is compromised.
- 4.2 Those that deliberately or persistently fail to comply will be dealt with firmly by the Council.
- 4.3 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.⁴
- 4.4 The Council will investigate all notifications/complaints of non-compliance.
- 4.5 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.
- 4.6 Council officers and decision makers 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, the Council will have arrangements in place to promote consistency including liaison with other agencies and authorities.
- 4.7 Formal enforcement action will generally only be considered and taken in the first instance in cases where individuals have exposed the public or employees to unacceptable risk, compromised safety or welfare to the public/employees, environment or animal health and/or sought to obtain an unfair commercial

⁴ Section 5.4, [Regulators' Code](#)

advantage, or other such situations that are considered to be so serious as to warrant formal action, **including immediate action (or action taken at the first possible safe opportunity).**

- 4.8 The Council will be accountable for the efficiency and effectiveness of our activities, while remaining independent in the decisions made.

Advice & Guidance

- 4.9 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 **(or action taken at the first possible safe opportunity), in which case the Council will document its decision.**⁵

- 4.10 It is understood 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.

- 4.11 The Council recognises 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 it will be ensured that:

- Legal requirements are made available and communicated promptly upon request.
- The information provided will be in clear, concise and accessible language and 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.

- 4.12 The Council's Scheme of Delegation, which includes details of who is responsible for managing investigations and making decisions on enforcement action, is available on the Council's website (www.rotherham.gov.uk) and can be provided in electronic or paper format upon request.

⁵ 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. [Regulators' Code \(p3\)](#) provides the Council with some flexibility in that if it '... concludes, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, the regulator is not bound to follow that provision, but should record that decision and the reasons for it.'

Feedback & Influencing

- 4.13 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.
- 4.14 The Council will consider the impact on business, and engage with businesses, before changing policies and service standards.

Fairness

- 4.15 Officers will be courteous, fair and efficient at all times, and will identify themselves by name.
- 4.16 The Council will give consideration to fairness, individual's human rights and natural justice, in all aspects of our enforcement work.
- 4.17 The Council believes in openness and equality in the way services are provided and that every individual is entitled to dignity and respect.
- 4.18 When making enforcement decisions the Council and its officers will 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.

Confidentiality

- 4.19 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.
- 4.20 Where any officer or member of the Council becomes aware of any concern in enforcement practice or compliance requirements the matter shall, in the first instance, be escalated to their line manager. If this approach is not seen to be appropriate the issue should be raised with another manager. The Council does operate a "whistleblowing policy", which provides for serious concerns to proceed confidentially.

Charging for Enforcement

- 4.21 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.
- 4.22 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

4.23 The Council will choose proportionate approaches based on relevant factors.⁶

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

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

Council Interests

4.25 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.

Publicity of Enforcement

4.26 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.

⁶ Section 1.1, [Regulators' Code](#)

Primary Authority & Other Agency Arrangements

- 4.27 Where a Primary Authority exists, the Council will consult on responses to breaches.
- 4.28 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.

5. Conduct of investigations

- 5.1 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](#)).
- 5.2 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.
- 5.7 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.
- 5.8 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.
- 5.9 Certain offences which are indictable carry provision for arrest in accordance with the Police and Criminal Evidence Act 1984. Where necessary, the Council and its officers may request South Yorkshire Police exercise their powers of arrest.
- 5.10 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.
- 5.11 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.
- 5.12 Levels of authorisation are detailed within the Council's Scheme of Delegation is available on the Council's website (www.rotherham.gov.uk) and can also be provided 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.

- 5.13 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.
- 5.14 Alleged offenders and witnesses will be 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.
- 6.2 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
- 6.3 Where appropriate additional guidance and codes of practice, including service specific policies and procedures will be taken into consideration.

How decisions are made on enforcement action

- 6.4 Decisions will take into account matters recognised in section 4.1 of this policy, and also consider and may take formal enforcement action where advice has been ignored.
- 6.5 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.
- 6.6 Before formal enforcement action is taken:

- Where appropriate, unless immediate action is required e.g. to prevent the destruction of evidence, or, there is an imminent risk **to the public or employees to unacceptable risk, compromised safety or welfare to the public/employees, environment or animal health and/or sought to obtain an unfair commercial advantage, or another relevant consideration**, there will be an opportunity to discuss the circumstances of the case. 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.⁷

6.7 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.

6.8 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.

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

6.9 Where appropriate there will be cooperation and coordination with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

6.10 Where an enforcement matter affects a wide geographical area beyond the Borough boundaries, or involves enforcement by one or more other local

⁷ Section 3.2, [Regulators' Code](#)

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.

6.11 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.

6.12 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.

6.13 All regulatory and enforcement actions are subject to review and monitor at varying line management levels 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.

6.14 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.

How decisions are communicated to those affected

6.15 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. Enforcement and Regulatory Services (Service Standards)

7.1 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.

Areas regulated

7.2 The enforcement services are delivered in a number of service areas:

| | | |
|--------------------------|-------------------|--------------------------|
| Environmental Protection | Trading Standards | Safety at Sports Grounds |
| Public Health | Licensing | Private Sector Housing |
| Food, Health and safety | Parking | Highways |
| Animal Health | Dog Control | Green Spaces |
| Waste Management | Enviro-Crime | Street Cleansing |

How services are delivered

7.3 The Council makes a fundamental contribution to public safety and the 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

7.4 Activities are determined by assessing the needs of local people, the business community, and considering the risks that require addressing. This is advised through customer satisfaction surveys, feedback from specific customers, interaction with business and public and through using data and other information available to us and our partners. Resources are targeted appropriately, in the light of these local needs and of national priorities.

7.5 Details of the current regulatory work programme is available on request either electronically or in paper copy.

7.6 The Council is committed to being transparent in our activities and will measure what is important, A range of information about our performance is published. This is available on request either electronically or in paper copy.

7.7 Our activities are carried out in a way that supports those regulated by the Council to comply, protect the public and grow. This is done by:

- Providing information, guidance and advice to help legal requirements, (see [Helping you to get it right](#)).
- Carrying out inspections and other activities to check compliance with legal requirements, and checks are targeted where it is believed they are most needed, (see [Inspections and other compliance visits](#)).
- Dealing proportionately with breaches of the law as set out in this Enforcement Policy, including taking firm enforcement action when necessary, (see [Responding to non-compliance](#)).

- Providing 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](#)).

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

Working with Businesses and Individuals

7.8 In all dealings with the Council enforcers and regulators businesses and individuals 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.

7.9 Whilst recognising that businesses and individuals will receive advice and inspections from other organisations, wherever possible, coordination and linkages will be made with those agencies to ensure that the best service is provided.

Helping Businesses and Individuals get it right

7.10 The Council wants to work with businesses and individuals to be compliant and successful and 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 reported to the Council.

7.11 Information and guidance to help make sure legal requirements are met are available on request either electronically or by paper copy.

7.12 Where advice is needed it will be tailored to your particular needs and circumstances. Steps will be taken to:

- Discuss 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 given is confirmed, if requested, in writing
- 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

7.13 Compliance is monitored and supported 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 – visits will not be made without a reason.

7.14 Notice that officers intend to visit will be provided, unless there is a specific reason to believe that an unannounced visit is more appropriate, will be given.

7.15 When Council officers visit 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
- Provide a written record of the visit.

7.16 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 and Surveillance of Social Media

7.17 One of the enforcement tools available to public bodies such as the Council is the ability in certain circumstances to:

- (i) Carry out directed surveillance. - This is surveillance that:
 - is covert;
 - conducted for the purposes of a specific investigation or operation;
 - is likely to result in the obtaining of private information about a person; and

- is conducted otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable to seek a court authorisation.
- (ii) Make use of a covert human intelligence source (CHIS), which is a person who:
- establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of the following;
 - he covertly uses such a relationship to obtain information or to provide access to any information to another person; or
 - he covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

The use of these powers is 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, is in accordance with the Council's RIPA Policy and is authorised by the Court. The Council's RIPA Policy can be viewed here:

<https://modern.gov.rotherham.gov.uk/documents/s119005/RIPA%20Policy%20019%20-%20Appendix%20A.pdf>.

7.18 The internet and social media provide a range of benefits and opportunities to individuals and businesses, and the vast majority of individuals use such opportunities for legitimate purposes.

7.19 However, Rotherham MBC recognises that social media sites in particular provide the opportunity for rogue businesses and / or individuals to exploit consumers and avoid traditional approaches to regulation (such as premises inspections). Rotherham MBC therefore considers that in undertaking its enforcement duties, in certain circumstances, authorised officers may be required to undertake reconnaissance and/or surveillance of social media sites / profiles and other websites in order to effectively enforce the relevant statutory requirements.

7.20 Simple reconnaissance of such sites is unlikely to interfere with a person's reasonably held expectation of privacy and therefore is not likely to require a directed surveillance authorisation under RIPA. However, if it is necessary to systematically collect and record information about a particular person or group, a directed surveillance should be considered.

7.21 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. Where it is deemed that a directed surveillance authorisation is required, it will be obtained by the investigating officer before the surveillance / monitoring of social media sites takes place, 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.

Responding to non-compliance

7.22 Where failure to meet legal obligations is identified, there be a proportionate response, taking account of the circumstances, in line with this Enforcement Policy.

7.23 Where action is needed to remedy any failings officers 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 have been 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

Requests for our services

7.24 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.

7.25 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

7.26 A detailed breakdown the both the response and expected resolution time is available on request either electronically or in paper copy. However, please be aware that judgment will be made by officers to determine whether a more prompt response is required.

7.27 The Council's website provides information about all Council services and can be found at www.rotherham.gov.uk.
You can also contact us by:

Email: <https://www.rotherham.gov.uk/forms/form/45/en/enforcement>

General Enquiries: 01709 382121

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

Opening Times

7.28 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 concerns. Officers will also work at times outside the above core hours to aid compliance and enforcement of standards.

7.29 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.

7.30 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.

7.31 Personal data will be managed in accordance with the Council's Data Protection Policy which can be found at:

https://www.rotherham.gov.uk/info/200031/data_protection_and_freedom_of_information.

Our Teams

7.32 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.

7.33 Where specialist knowledge is required in an area outside of the Council's expertise arrangements can be made, with both neighbouring authorities and other regulatory organisations, to call on additional resources as necessary.

Working with others

7.34 The Council's aim is for all Council services work together so a streamlined service is provided.

7.35 In Rotherham there is a much wider regulatory system. The Council has working relationships with other regulators such as South Yorkshire Police,

South Yorkshire Fire and Rescue Service, the Health and Safety Executive, and the Environment Agency. This enables officers 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.

7.36 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, 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 contacting the Council as above.

8. Review of this policy

8.1 Before the Council changes policies that affect 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.⁸

8.2 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.

9. Comments and Complaints

9.1 Feedback helps ensure our services meet 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.

9.2 A number of groups are worked with to help gather opinions to ensure that services are meeting our customer's needs. New members to these groups are always welcomed.

9.3 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 which is available at:

https://www.rotherham.gov.uk/info/200025/complaints/516/complain_about_council_services/2, or in electronic or paper format upon request.⁹

9.4 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 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.

⁹ Section 2.3, [Regulators' Code](#)

- 9.5 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.
- 9.6 Contact details for comments or complaints about the policy, or the conduct of local authority staff can be made by using any of the contact methods shown in paragraph 7.9 above.

Appendix A: Legislation, Guidance and Codes Used In The Preparation of the Enforcement Policy

A1. 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.¹⁰ 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:

- (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 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.
- (iv) **Transparent** – those regulated will be advised appropriately so as to understand what is expected of them and what they can anticipate in return.
- (v) **Targeted** – resources will be focused on higher risk enterprises and activities, reflecting local need and national priorities.

A2. 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.

A3. 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.

A4. 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 1988 will be followed.

¹⁰ Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at www.legislation.gov.uk

A5. 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. There must be 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 will be taken into account are detailed under the enforcement options available to us in [Appendix C](#).

A6. 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: Conduct of Investigations

B1 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
- Criminal Justice Act 2003
- the Human Rights Act 1998

B2 These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

B3 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.

B4 All investigations shall be carried out fully to ensure that an appropriate decision as to whether non-compliance or breach of legislation has occurred or is occurring. At all times during an investigation the investigating officer shall notify to their line manager issues whereby it is considered that a full investigation may be being compromised.

B5 Investigation Officers are required to escalate to their line manager all (suspected or actual) serious or complex incidents of non-compliance or risk to public safety. This includes, and not exclusively, all non-compliance directly impacting on the safety of young and vulnerable persons.

B6 All investigations will be carried out to ensure full compliance with appropriate discharge in accordance to Appendix C. The person making, or affected by a complaint against the activity of a business or person that has been investigated will be notified of the outcome of the investigation, including the intervention given.

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

C1 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.

C2 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.

C3 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.

C4 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.

C5 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.

C6 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 Ministry of Justice “Simple Cautions for Adult Offenders” 14th November 2013 (replacing earlier version dated 8th April 2013, which replaced Home Office Circular 016/2008) and other relevant guidance.

C7 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.

C8 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.

C9 Enforcement options available in relation to Sports Grounds

Reduction in capacity

Reducing the capacity of all, or part of, a sports ground is a formal action which would be appropriate in the following situations:

- if an incident suggests that the management of a sports ground is performing poorly; or
- if the Council's inspecting personnel identify any deficiencies in the fabric, equipment, records or management systems, which the authority has not already taken into account when accepting or calculating the permitted capacity.

Any new capacity should be properly calculated having regard to the change in circumstances and the procedures to be followed will be the same as during the routine annual review of the safety certificate. Ground management should be invited to submit its proposed revised Physical (P) or Safety (S) factor, but the Council reserve the right to overrule this if appropriate.

When reducing a capacity it is important that

- officers act reasonably and in accordance with due process, not least because the certificate holder has a right of appeal against any reduction in capacity; and
- a formal amendment to the safety certificate is issued.

Once the remedial measures or improvements have been implemented consideration should be given to restoring the original capacity.

Prohibition notice

Unlike the other provisions of the 1975 and 1987 Acts, the power to issue a prohibition notice applies to all sports grounds, as defined in section 17 of the 1975 Act, including those that are neither designated nor contain a regulated stand. Section 10 of the 1975 Act empowers the Council to issue a prohibition notice in respect of all or part of any sports ground if it considers that "the

admission of spectators to a sports ground or any part of a sports ground involves or will involve a risk to them so serious, that, until steps have been taken to reduce it to a reasonable level, admission of spectators to the sports ground or that part of the sports ground ought to be prohibited or restricted”.

A prohibition notice is therefore a measure of last resort and should only be used where an amendment of the safety certificate (where issued) is not considered an effective way of dealing with the risk(s).

When issuing a prohibition notice consideration should be given as to whether the risk to spectators is or may be imminent and if so the notice should take effect as soon as it is served. In all other cases it should come into force at the end of the period specified in the notice.

A prohibition notice must specify:

- the nature of the risk to spectators; and
- the number of spectators that may be admitted to the sports ground, or any part of the sports ground, until appropriate steps have been taken to address those risks.

The notice may also include directions as to the steps which will have to be taken to reduce the risk to a reasonable level. Under the Environment and Safety Information Act 1988 the local authority is required to keep a register of any prohibition notices that it has issued.

Policy for the Use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004

January 2018

Rotherham Metropolitan Borough Council

Policy for the Use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004.

This policy is supplementary to the Council's General Enforcement Policy, which was approved by Cabinet in September 2019.

The purpose of this policy is to set out the framework within which decisions will normally be made with regard to applying for a Rent Repayment Order and to issuing civil penalties in relevant cases. This policy may be departed from where the circumstances so justify. Each case will be dealt with on its own merits, having regard to its particular circumstances.

This policy is designed to ensure transparency, consistency and fairness in how and when civil penalties are imposed and Rent Repayment Orders are pursued.

Civil Penalties under the Housing and Planning Act 2016

When introducing civil penalties through the Housing and Planning Act 2016, Government Ministers made it very clear that they expect local housing authorities to use their new powers robustly, as a way of clamping down on rogue landlords.

In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government) stated:

'[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000' because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants'.

This policy should be read alongside the Council's, 'General Enforcement Policy' and sets out how Rotherham Borough Council will determine the level of financial (civil) penalty in individual cases, once the decision to impose a financial penalty has been made.

Determining if a civil penalty can be applied the following must be considered:

A). Civil penalty is only available for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234). A separate offence is committed for each regulation breached.

NB. Breach of a Prohibition Order can only be addressed by prosecution, however a Rent Repayment Order must be considered after a successful prosecution and may be considered before prosecution.

B). The criminal burden of proof (beyond reasonable doubt) must have been achieved. Consideration should be given to the Code for Crown Prosecutors in making this judgement.

C). If a civil penalty is the appropriate disposal for the individual case or if prosecution would be more appropriate. An authority cannot issue a civil penalty and prosecute for the same offence. Though multiple civil penalties are possible where multiple offences are committed. The effect of the civil penalty is that the offender will not receive a criminal record or be publically named for the offence. However the civil penalty should not be seen as a soft option and can be used for serious offenses if it is considered that they will offer the most appropriate punishment and deterrent in a specific case.

The following factors are some of the issues which should be considered in determining if a civil penalty or prosecution should be applied to an individual offence.

- The severity of the offence and the resulting potential harm
- The offending history of the alleged offender
- If the offence was committed by mistake or with knowledge
- The health and capacity of the alleged offender
- The public interest in taking the alleged offender into court where the offence will be publicised and the individual held to account in public.
- The likely impact of Court action verses a civil penalty, in deterring further offending.

Determining the level of civil penalty which should be applied:

The Government recommends that, in order to ensure that the civil penalty is set at an appropriate level, the local housing authority produces its own policy to ensure fair and transparent application of penalties.

The Council has based its level of civil penalty on the Governments guidance and the principles set out in the Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline. This sentencing guidance issued by the Sentencing Council is considered appropriate to the type of offence likely to be considered under this Policy. The Sentencing Council have set out a range of fines which are linked to the culpability of the offender and the actual and potential harm resulting from the offence.

Relevant Considerations

A). Severity of offence

The more serious the offence, the higher the civil penalty should be.

B).The culpability and track record of the offender

A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations. Relevant previous offences include property related offences, offences relating to drugs, violence, discrimination or fraud, consideration should be given to the nature of the offence and what bearing it could have on the management of a privately rented property.

C). The harm caused to tenants

This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when the local housing authority imposes a civil penalty.

D). The punishment of the offender

A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities. The offender's financial means is a material consideration when determining the level of penalty which will represent an appropriate punishment to that individual.

E). Whether it will deter the offender from repeating the offence

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

F). Whether it will deter others from committing the offence

While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that;

(a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

G). Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

H). The cost to the Council of the enforcement action

The cost of investigating the offence(s) and preparing the case for formal action, together with any costs that it incurs in defending its decision at the First-tier Tribunal.

The actual level of the penalty will be initially determined using an assessment of **culpability** and **harm** factors described in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

Culpability

| | |
|------------------------------------|--|
| <i>Very high (Deliberate Act)</i> | Where the offender intentionally breached, or flagrantly disregarded, the law e.g. failure to comply with improvement notice. A person who has a high public profile and knew their actions were unlawful |
| <i>High (Reckless Act)</i> | Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken e.g. failure to comply with HMO Management Regulations. |
| <i>Medium (Negligent Act)</i> | Offence committed through act or omission which a person exercising reasonable care would not commit e.g. failure to complete all items on a schedule of works within the required timescale. |
| <i>Low</i> | Offence committed with little fault e.g. <ul style="list-style-type: none"> • significant efforts were made to address the risk although they were inadequate on this occasion. • there was no warning/circumstance indicating a risk. • failings were minor and occurred as an isolated incident. • Obstruction by tenant or tenant damage. |

Harm

The table below contains a non-exhaustive list of factors relating to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does. Guidance in this area is available in the ‘Housing Health and Safety Rating System Operating Guidance’

| | |
|---|---|
| <i>Category 1 – High Likelihood of Harm</i> | <ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s) and/or having a widespread impact • High risk of an adverse effect on individual(s) – including where persons are vulnerable |
| <i>Category 2 – Medium Likelihood of Harm</i> | <ul style="list-style-type: none"> • Adverse effect on individual(s) (not amounting to Category 1) • Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect • The Council and/or legitimate landlords or agents |

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| | |
|---|---|
| | <p>substantially undermined by offender's activities</p> <ul style="list-style-type: none"> • The Council's work as a regulator to address risks to health is inhibited • Consumer/tenant misled to their prejudice |
| <i>Category 3- Low Likelihood of Harm</i> | <ul style="list-style-type: none"> • Low risk of an adverse effect on individual(s) • Public misled but little or no risk of actual adverse effect on individual(s) |

Having determined the **category**, the appropriate level of civil penalty within the category will be assessed from the **starting point for that category and** further adjusted, if necessary, within the category range for aggravating and mitigating features determine by reference to the guidance in 'Relevant Considerations' above, the cost of enforcement and any other relevant aggravating or mitigating factor relevant to the case including the offender's ability to pay.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability before adjustment.

| | Starting Point | Range | |
|------------------------------|----------------|-------|--------|
| | | Min | Max |
| Low culpability | | | |
| Harm Category 3 | £50 | £25 | £175 |
| Harm Category 2 | £125 | £50 | £350 |
| Harm Category 1 | £300 | £125 | £750 |
| Medium culpability | | | |
| Harm Category 3 | £350 | £175 | £750 |
| Harm Category 2 | £1000 | £350 | £2000 |
| Harm Category 1 | £2500 | £750 | £4500 |
| High culpability | | | |
| Harm Category 3 | £1000 | £500 | £2250 |
| Harm Category 2 | £3000 | £1000 | £5500 |
| Harm Category 1 | £6250 | £2500 | £12500 |
| Very high culpability | | | |
| Harm Category 3 | £2500 | £1250 | £4500 |
| Harm Category 2 | £6250 | £2500 | £12500 |
| Harm Category 1 | £15000 | £6250 | £30000 |

Obtaining financial information

The statutory guidance advises that local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the Council has obtained or the offender has supplied any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his financial position to enable the Council to assess what an offender can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will

be entitled to draw reasonable inferences as to the offender's means from evidence it has received and from all the circumstances of the case ***which may include the inference that the offender can pay any financial penalty***. It is important that the final penalty removes the advantage gained by the offence and that the level has a punitive and deterrent effect based on the perpetrator having regard to their specific circumstances.

For illustration;

As many offenders will be owners of one or more properties, they are likely to have assets that they can sell or borrow against. Property values and rental incomes have consistently increased over the long term, so in the majority of cases those offenders with mortgaged properties are likely to have value in the property that can be released. Therefore, if an offender claims that they are unable to pay a financial penalty and show that their income is small, consideration should be given to properties owned that can be sold or refinanced.

Reductions / Discounts in the level of civil penalty

| Circumstance for discount | % Reduction |
|---|---|
| Where an offender completes all outstanding works to the satisfaction of the council, before the Notice of Intent expires, e.g. 28 days from service, and pays the civil penalty in full within 14 days of the 'Final Notice'. | The Offender can request a reduction of the calculated Civil penalty. Where the offender has been seen to cooperate in the latter stages of enforcement, the Assistant Director of Environment and Street Scene, may at their discretion, apply a discount of up to a maximum of 20% of the calculated Civil penalty. |

Documentation

Civil penalties must be fully document. All issues considered against the areas discussed above must be recorded. This level of detailed justification will be required to explain to the recipient the level of civil penalty and to any subsequent Appeal Hearing.

The Process for issuing a civil penalty

The investigating officer will produce a prosecution case file, presenting evidence to satisfy the criminal burden of proof. The officer will discuss with their Principal Officer which is the most appropriate disposal of the offence, with reference to this Policy and the General Enforcement Policy.

Where a civil penalty is considered the appropriate remedy, the investigating officer will;

- Cost all enforcement activity.
- Identify the adjusted level of civil penalty justified in the specific case.
- Record the reasons for the level of penalty including any adjustments

- Refer case to the Head of Service for authority to proceed to a civil penalty.
- Service notice of the Council's proposal ('notice of intent') to impose a financial penalty.

The notice of intent must set out:

- the amount of the proposed financial penalty;
- the reasons for proposing to impose the penalty; and
- information about the right of the landlord to make representations.

The Notice of Intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates or at any time when the conduct is continuing.

NB. Where a civil penalty is issued the offence is considered discharged. However, if the defects persist, a further Improvement Notice can then be served and enforced if that is not complied with, opening the possibility of a further civil penalty or a prosecution.

What happens after a person receives a notice of intent?

A person who is given a Notice of Intent may make written representations to the local housing authority about the intention to impose a financial penalty; Any representations must be made within 28 days from when the notice was given.

The written representation should be sent to;

Assistant Director of Community Safety and Street Scene,
Riverside House,
Main Street,
Rotherham.
S60 1EA

The Assistant Director may confirm, vary or withdraw a charge based on the information provide in a representation.

Information which will be considered will include but not be limited to;

- Number of properties owned
- Level of cooperation with the Council
- Period of time the property has been let
- Personal financial circumstances
- History of compliance with Housing Legislation
- Membership of a professional body
- Efforts made to try to comply
- Any reason that indicates the charge has been made unreasonably

What happens after representations (if any) have been made?

After the end of the period for representations, the local housing authority must decide whether to impose a penalty and, if so, the amount of the penalty.

If the local housing authority decides to impose a financial penalty, it must give the person a notice ('final notice') requiring that the penalty is paid within 28 days.

The 'Final Notice' must contain;

The final notice must set out:

- the amount of the financial penalty;
- the reasons for imposing the penalty;
- information about how to pay the penalty;
- the period for payment of the penalty (28 days);
- information about rights of appeal; and
- the consequences of failure to comply with the notice.

Can the local housing authority withdraw or amend the notice?

The local housing authority may at any time:

- withdraw a notice of intent or final notice; or
- reduce the amount specified in a notice of intent or final notice.

Right of appeal

A person who receives a final notice may appeal to the First-tier Tribunal against:

- the decision to impose a penalty; or
- the amount of the penalty.

The First-tier Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the local housing authority, or to cancel the civil penalty. If the First-tier Tribunal decides to increase the penalty, it may only do so up to a maximum of £30,000. Appeal rights are contained within Schedule 13A to the Housing Act 2004. The First-tier Tribunal can dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success.

If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.

Recovery of Penalty Charge

The local housing authority **will** recover any unpaid civil penalty charge on the order of the County Court, as if payable under an order of that Court, as laid out in the '2016 Act' The Local Housing Authority will use county court bailiffs to enforce the order and recover the debt.

Rent Repayment Orders

A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent. First introduced for licensing offences in the Housing Act 2004 have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences, described below.

- Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)

- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (due to be enacted in November 2017);
- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)

A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.

The Council **must consider** a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit. See below for further detail.

Rent Repayment Orders under the Housing and Planning Act 2016

Rent Repayment Orders (RRO's)

A Rent Repayment Order is defined in section 40(2) of the Housing and Planning Act 2016 as an order requiring the landlord under a tenancy of housing to –

- (a) repay an amount of rent paid by a tenant, or
- (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

NB. The reference to universal credit or a relevant award of universal credit includes housing benefit under Part 7 of the Security Contributions and Benefits Act 1992 pending its abolition. The Council as the local housing authority has **a duty under** section 48 of the Housing and Planning Act 2016 to consider applying to the First-tier Tribunal ('the Tribunal') for a Rent Repayment Order in cases where an offence from the list below has been committed.

Offences for which a Rent Repayment Order can be obtained:-

- Failure to comply with an **Improvement Notice**, contrary to section 30(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Failure to comply with a **Prohibition Order** etc., contrary to section 32(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Being a person having control of or managing a **house in multiple occupation** (HMO) which is required to be licensed under Part 2 of the Housing Act 2004 but **which is not so licensed**, contrary to section 72(1) of the Housing Act 2004

- Being a person having control of or managing a house which is **required to be licensed under Part 3** of the Housing Act 2004 **but is no so licensed**, contrary to section 95(1) of the Housing Act 2004
- **Using violence to secure entry to a property**, contrary to Section 6(1) of the Criminal Law Act 1977
- **Illegal eviction or harassment** of the occupiers of a property, contrary to section 1(2), (3) or (3A) of the Protection from Eviction Act 1977
- **Breach of a banning order** made under section 21 of the Housing and Planning Act 2016 (not yet in force but scheduled to be 1 October 2017)

The offences under the Housing Act 2004 must relate to hazards within occupied premises and not common parts only. The offence must have been committed on or after 6th April 2017. A RRO can be applied for whether or not the landlord has been convicted.

Evidence of commission

Where there has been a conviction, a certificate of conviction will suffice to establish commission of the specified offence. In the absence of a conviction, the Tribunal will need to be satisfied beyond reasonable doubt that the landlord committed the specified offence. Officers shall have regard to the Crown Prosecution Service Code for Crown Prosecutors (see Code for Crown Prosecutors) in order to establish whether there is likely to be sufficient evidence to secure a conviction and therefore to establish the necessary burden of proof to the Tribunal.

Statutory Guidance

In deciding whether to apply for a RRO, the Council must under section 41(4) of that Act have regard to any guidance issued by the Secretary of State (see the DCLG document 'Rent Repayment orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' - Rent Repayment Orders Guidance).

Assistance

Council officers may offer advice to tenants who are eligible to claim a RRO in respect of rent paid themselves but in such cases, the tenant will usually be referred direct to Derbyshire Law Centre or other appropriate bodies for further support.

Considerations for decision as to whether to apply for a RRO

Council officers are granted powers and duties to deliver proportionate and targeted enforcement. It is vital that regulatory resource is used consistently and to best effect by ensuring that resources are targeted on addressing the highest risks. The use of RRO's is only to be used where considered appropriate.

The objective of an application for a Rent Repayment Order is not only to issue a punishment as a consequence of non-compliance with the law, but also to deter the offender and others in a similar position from repeat offences.

If a conviction for the Offence or a civil penalty has been obtained then it is normally expected that a Rent Repayment Order will be pursued where the Council have paid housing benefit, or the housing element of Universal Credit. The Tribunal must, in these cases, order that the maximum amount (12 months) of rent be repaid in these circumstances

In determining if application for a Rent Repayment Order is appropriate, following questions shall be considered:

TABLE 1

| No. | Question | Yes or No |
|-----|---|---|
| 1. | Has the offender been prosecuted and convicted of a relevant offence in Court? | If yes, make an RRO application. If no go to step 2. |
| 2. | Has evidence been obtained from Benefits to confirm that Housing Benefit has been paid by RMBC over the last 12 months? | If no – no case for RRO. If yes, proceed to step 3. |
| 3. | Does the LA have sufficient evidence to prove ‘beyond reasonable doubt’ that a relevant offence has been committed? Is the evidence reliable? Is there no credible defence? | If no – case closed, do not pursue. If yes, proceed to step 4. |
| 4. | Is it in the public interest to proceed to apply for an RRO? (consider the level of harm that has been caused) | If no – case closed, do not pursue. If yes, proceed to step 5. |
| 5. | Is pursuing an RRO proportionate to the offence? | If no – case closed, do not pursue. If yes, proceed to step 6. |
| 6. | Does the offender have any previous convictions? | If yes – proceed to RRO. If no, proceed to step 7. |
| 7. | Where no previous offence – is the issuing of a RRO likely to deter from future offences? | If yes – proceed to RRO. If no, consider closing and not pursuing. |
| 8. | RRO Would the issuing of a RRO cause substantial hardship to the offender, and are there mitigating circumstances to suggest the LA should not proceed? | If Yes, complete notes to justify reason not to pursue. If no, proceed to RRO application |
| 9. | Are there any other factors that would indicate the Council should not proceed with the issuing of the RRO | If Yes, complete notes to justify reason not to pursue. If no, proceed to RRO application |

If the conclusion is yes to pursue RRO, then the amount to be reclaimed should be determined by considering the factors in the table below.

If the offender has already been convicted of the offence, then the amount shall automatically be determined as 12 months rental income.

If no conviction has been obtained, but the decision has been made to pursue RRO, the factors in the table below should be considered to determine a sum. The amount of rent to be repaid cannot exceed the amount actually collected. Where the tenant is in receipt of Universal Credit, the formula provided in the DCLG guidance in relation to RRO’s shall be followed.

TABLE 2

| | |
|----|---|
| 1. | Punishment of the offender – the RRO should have a real economic impact on the offender and demonstrate consequences of non-compliance with their responsibilities. Consider the conduct of landlord and tenant, financial circumstances of landlord and whether landlord has previous convictions |
| 2. | Deter the offender from repeating the offence – level of RRO must be high enough to deter offender from repeating |
| 3. | Dissuade others from committing similar offences – RRO will be in the public domain. Robust and proportionate use is likely to help others comply with their responsibilities. |
| 4. | Remove any financial benefits that the offender may have obtained as a result of the offence – landlord should be losing the benefits that he has accrued whilst not complying with their responsibilities |
| 5. | Is there any other factor the Council considers should be taken into account. |

Consideration of the above points will determine whether the full amount of rent should be reclaimed or whether there are mitigating circumstances, this will depend on the severity of the offence and whether this justifies 12 months of non-payment of rent.

If there are mitigating circumstances, then a deduction should be applied from the full 12 months. The amount payable under a RRO is recoverable as a debt.

Officers must fully document the reasons for making the decision to apply based on tables 1&2, as this will be required for the application to the First Tier Tribunal. Application will be made via legal services.

Further Guidance

- The Housing and Planning Act 2016
- Civil penalties under the Housing and Planning Act 2016

Guidance for Local Housing Authorities - Department for Communities and Local Government published April 2017

- **Rotherham MBC's General Enforcement Policy**
- The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017
- Sentencing Council -Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline