

6th AUGUST 2024

KEY DECISION? NO

CORPORATE SANCTIONS AND ENFORCEMENT POLICY

SUMMARY AND RECOMMENDATIONS:

In accordance with the Constitution, adoption of any Council policy is required by Cabinet.

Cabinet are recommended to adopt the Corporate Sanctions and Enforcement Policy.

1. INTRODUCTION

1. The purpose of this report is to seek Cabinet approval to adopt the proposed Corporate Sanctions and Enforcement Policy. The Legal team have checked that the policy is in line with best practice across other local authorities and that the legislation and guidance is up-to-date.

2. BACKGROUND

- 2.1 The Corporate Sanctions and Enforcement Policy sets out what can be expected from the Council's regulatory services when sanction and enforcement action is considered.
- 2.2 Under the Constitution, Part 3 – Section 3 (Scheme of Delegation for Executive Matters), clause 3.5(5), the Cabinet is required to approve “corporate strategies, policies and organisational programmes (and updates) prepared within the overarching budget and policy framework agreed by the Council.”
- 2.3 Cabinet are recommended to adopt the Corporate Sanctions and Enforcement Policy as an “umbrella” policy. Additional service specific policies, procedures, codes, and guidance may exist which detail the processes that all officers working within that service area will follow when considering what enforcement action is appropriate.

3. DETAILS OF THE PROPOSAL

General

- 3.1. The proposed Corporate Sanctions and Enforcement Policy is at Appendix 1.

Alternative Options

- 3.2. The Corporate Sanctions and Enforcement Policy forms part of the Council's wider policy framework, defined in Section 8 of Part 4 of the Constitution, 1(b) and must be adopted by Cabinet (Matters reserved to the Cabinet):

“Those plans and strategies which are overarching borough wide or council wide, with medium to long-term timescales (more than two years) which, for example, establish the council's financial strategies, and policies for housing, environment, economy and corporate governance.”

The alternative option would be to not adopt the policy by Cabinet; however this approach could be legally challenged under our Constitution.

Consultation

- 3.3. There is no requirement for consultation in respect of the proposed policy.

4. IMPLICATIONS

Risks

- 4.1. There are no direct risks associated with this report.

Legal Implications

- 4.2. The Council must follow the relevant legislation: the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and the Constitution. This policy will be taken into consideration as part of any corporate enforcement or legal action.

Financial Implications

- 4.3. There are no direct financial implications.

- 4.4. **Resourcing Implications**

There are no direct resourcing implications.

Equalities Impact Implications

- 4.5. This policy is overarching across all the Council's services and is designed to ensure a consistent, fair, proportionate, and effective approach to enforcement. The Council recognises the statutory duty to promote equality in enforcement decisions.
- 4.6. A full equality impact assessment is undertaken before taking legal action. As a public sector organisation, we have a legal duty under the Equality Act 2010 to show that we have identified and considered the impact and potential impact of our activities on all people with "protected characteristics" under the legislation. The relevant "protected characteristics" are age; disability; gender reassignment, pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 4.7. The level of detail required will depend on what you are assessing, who it might affect, and how serious any potential impacts might be.
- 4.8. The general duty requires public authorities, in the exercise of their functions, to have due regard to the need to: a) eliminate unlawful discrimination, harassment, victimisation and any other unlawful conduct prohibited by the act; b) advance equality of opportunity between people who share and people who do not share a relevant protected characteristic; and c) foster good relations between people who share and people who do not share a relevant protected characteristic.

Community Safety Implications

- 4.5 The policy highlights the aims and principles each service should consider when exercising their duties, recognising that the primary purpose of the Council's regulatory services is to support compliance in order to protect residents and the wider public, businesses, the environment, and groups such as consumers and workers.

5. RECOMMENDATION:

- 5.1. It is recommended to Cabinet to approve the proposed Corporate Sanctions and Enforcement policy.

LIST OF APPENDICES/ANNEXES:

Appendix 1 – Corporate Sanctions and Enforcement Policy

BACKGROUND DOCUMENTS:

None

CONTACT DETAILS:

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Corporate sanctions and enforcement policy

1. Introduction

This policy sets out what can be expected from the Council's regulatory services when sanction and enforcement action is considered. This policy is overarching across all the Council's services and is designed to ensure a consistent, fair, proportionate, and effective approach. The policy highlights the aims and principles each service should consider when exercising their duties, recognising that the primary purpose of the Council's regulatory services is to support compliance in order to protect residents and the wider public, businesses, the environment and groups such as consumers and workers.

In addition to this "umbrella" policy, it should be noted that additional service specific policies, procedures, codes and guidance may exist which detail the processes that all officers working within that service area will follow when considering what enforcement action is appropriate. Where these exist, these documents will also comply with this policy where appropriate. For example, Planning has nationally prescribed procedures that govern the planning enforcement process, where any appeal would be handled by the planning inspectorate not the Council.

The aim of the Council's regulators is to:

- Support those we regulate to comply
- Change the behaviour of the offender and encourage compliance
- Change attitudes in society to offences which may or may not be serious in themselves, but which are widespread
- Eliminate any financial gain or benefit from non-compliance
- Be responsive and consider what is appropriate for the particular offender and the regulatory issue
- Be proportionate to the nature of the offence and/or the harm caused
- Restore the harm caused, where appropriate
- Deter future non-compliance or offending
- Reassure the taxpayer that offences/offenders will not be tolerated
- Protect the public purse

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

In assessing what sanction and enforcement action is necessary and proportionate, the Council will have regard to:

- The seriousness of the offence/compliance failure
- The past and current performance of the alleged offender, for example, previous breaches of law
- Failure to comply with statutory notices/obligations and sanction and prosecution history
- Any obstruction by the alleged offender, including failure to supply information in a timely manner
- The nature and extent of the risk/cost to the public purse
- The public interest test
- A blatant disregard for the laws, deliberate intent or negligence
- The vulnerability of and/or impact on those affected
- Any mitigating circumstances
- Statutory guidance, codes of practice and legal advice
- A person's age in relation to young people (termed 'juveniles') aged under 18
- Any interference/tampering with seized materials.

2. General principles of enforcement

This policy recognises the obligation in law for the Council's regulators to have regard to the general principles of good enforcement and in particular to the Regulators' Code. To this end the Council's regulatory activities will be carried out in a way that is, transparent, accountable, proportionate and consistent.

The Council believes in supporting economic growth and in firm but fair regulation, and will follow and apply the following principles in the exercise of its functions.

Proportionality - The sanction and enforcement action the Council takes will be proportionate to the risks posed, the size and nature of the regulated activity and to the seriousness of the offence and/or the harm caused. Any decision regarding enforcement action will be taken on the merits of each case and will be impartial and objective. It will not be affected by race, disability, socio-economic factors, age, politics, gender, sexual orientation or religious beliefs.

Consistency – Where appropriate the Council will be consistent in sanction and enforcement decision-making, in the advice given, and in responses to complaints and other incidents.

Openness and Accountability – The Council will seek to maintain confidence in its duty to regulate by helping everyone who uses services, or against whom sanction and enforcement action is taken, to understand what is expected of them, and what they should expect from the Council.

Risk Assessment and Targeting – The Council will ensure that appropriate risk assessment is used to direct regulatory efforts where they are most

needed including, for example, at those responsible for risk to safety, health or serious environmental damage, at incidents where risk is least well controlled or at deliberate or organised crime. No inspection or visit takes place without a reason.

Furthermore, the Council's regulators will similarly operate in accordance with the specific obligations of the Regulators Code, summarised below.

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

Advice and Guidance – The Council's regulators will seek to provide information, advice and support, easily and cost effectively, to make it easier for regulated entities to understand their obligations, taking into account their needs and circumstances.

Risk Assessment – The Council's regulators will ensure that the allocation of regulatory resource is targeted where it will be most effective.

Inspections and other visits – The Council's regulators will carry out interventions in accordance with risk assessment principles, where visits are requested (if appropriate) or where the Council is acting on relevant intelligence.

Information Requirements – The Council's regulators will seek to balance the need for information from regulated parties with the burden that this imposes.

Compliance and Enforcement Actions – The Council's regulators will seek to support compliance by positive and proactive approaches, as well as targeting those who deliberately or persistently breach the law.

Accountability – The Council will be accountable for the efficiency and effectiveness of regulatory activities. Decision-making will be recorded, transparent and undertaken in accordance with the Council's Scheme of Delegation.

3. Equality, diversity and the protection of human rights

The Council recognises the statutory duty to promote equality in enforcement decisions. This will ensure that the needs of all sectors of the community are recognised. In accordance with that policy, all policies including this one are monitored for any adverse impact on equality issues. The Council will similarly ensure that sanction and enforcement actions and all associated decisions take account of the provisions of the Equality Act 2010.

4. Enforcement options

Rushmoor will consider taking appropriate action against any duty holder suspected of committing an offence, subject to this policy. There is a wide range of enforcement tools available to the Council's regulators, including:

- No action
- Voluntary Action

- Informal Action and Advice
- Warning Letter
- Fixed Penalty Notices
- Penalty Charge Notices
- Formal Notice
- Seizure of goods/equipment
- Injunctive Action and other Civil Sanctions
- Refusal/Suspension/Revocation or Review of a licence
- Penalties
- Administrative Penalties
- Simple Caution
- Prosecution

5. An explanation of enforcement options

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

Voluntary Action – In some circumstances an agreed course of action may be entered into with duty holders, who wish to work with regulators to mitigate risk and ensure compliance (for example voluntary closure for a set period). Voluntary action may be considered where the offence was unintended, the duty holder is willing and the regulator has confidence that the duty holder will comply.

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

Fixed Penalty Notices (FPNs) and Penalty Charge Notices (PCNs) – are prescribed by certain legislation (as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of a breach). Where legislation permits, an FPN/PCN or fine may be issued without warning.

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

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

Similar action may be considered in relation to Non-Domestic Rates (NDR) Housing Benefit and Council Tax debts where civil enforcement for a liability order, bailiffs, committal hearing or charging order may be instituted.

Formal Notice - Certain legislation enforced by the Council allows notices to be served requiring duty holders to take specific actions or cease certain activities.

Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, taking into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice. All notices issued will include details of any applicable Appeals Procedures.

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

Seizure - Certain legislation enables authorised enforcement officers to seize goods, equipment or documents, for example, unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products, or any goods needed as evidence for possible future court proceedings. Seized items could be removed or left in situ. It is a criminal offence to interfere or tamper with these items.

Injunctive Actions and other Civil Sanctions - In certain circumstances, for example, where offenders are found to be repeatedly offending in similar areas or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with this e.g. dangerous or hazardous circumstances or environmental or public health issues.

Suspension, Review, Revocation and Refusal to renew Licences, etc. – In certain circumstances, and in accordance with service specific policies, certain licences and other permissions may be suspended, reviewed, revoked or not renewed.

Penalties - A billing authority may impose a fine on a person who fails without reasonable excuse to notify it of changes affecting their Council Tax.

Where the authority has imposed a penalty for Council Tax and a further request for the same information is made to that person and is again not properly complied with, the authority may impose a further penalty and this may be imposed each time the authority repeats the request and the person does not fulfil their statutory obligations.

Administrative Penalties – In certain circumstances under Council Tax legislation, an Administrative Penalty may be offered as an alternative to prosecution following fraudulent activity. Administrative Penalties do not require an admission of guilt.

However, the Council would need to be satisfied that;

- Sufficient evidence is available to prove the case to a criminal standard
- That it is in public interest
- The offender is 18 years or above
- The offender is willing to accept the Administrative Penalty as an alternative to prosecution

Simple Caution - In appropriate circumstances, where a prosecution would otherwise be justified, a simple caution may be administered with the consent of the offender after an admission of guilt. For a simple caution to be issued, the following criteria must be satisfied (in accordance Ministry of Justice Guidance 13 April 2015):

- Sufficient evidence must be available to prove the case to a criminal standard
- The offender must admit the offence
- It must be in the public interest to use a Simple Caution
- The offender must be 18 years or over

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

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

The decision to prosecute will be made by the manager or head of service and passed to the Corporate Legal Manager for consideration in accordance with the Council's Constitution and Scheme of Delegation.

6. Notifying alleged offenders and other parties

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

those concerned or the general public. In particular, where appropriate, the Council will:

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

During an investigation or other action, duty holders and witnesses will be kept informed of progress, where appropriate. In some circumstances, this may be delayed or limited due to the sensitive nature of some enquiries.

Interested parties will only be informed of the outcome of our investigation upon closure of the case where the information is in the public domain.

The Council will take all reasonable steps to protect personal information about individuals in accordance with our obligations under the Data Protection Act 2018 and General Data Protection Regulations. However, the Council may be permitted or obliged to disclose personal information in accordance with legislation (such as the Freedom of Information Act 2000), for tribunal procedural requirements or internal data sharing between council services and data sharing arrangements with external bodies. Although, this would not apply if disclosure would be likely to prejudice a criminal investigation.

7. Rights of complaint and appeal

If there is a right of appeal and any person or body against whom enforcement action is taken, or anyone with a legal interest in the outcome, is unhappy with the enforcement action taken by the Council, the matter must be pursued in accordance with any formal rights to appeal or similar where available. Dissatisfaction with information or advice provided may be pursued in accordance with the Council's Complaints Procedure. A prosecution will not be delayed as a result of an appeal or complaint. Some offences do not attract a right of appeal.

8. Liaison with other regulatory bodies and enforcement agencies

The Council will, where appropriate, co-operate and co-ordinate with regulatory bodies and/or enforcement agencies to maximise the effectiveness of enforcement actions. Subject to statutory restrictions, the Council may share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including government agencies, the

police, fire authorities, other statutory undertakers, Registered Social Landlords (RSLs) and other local authorities.

9. Pursuance of costs

The Council is committed to the protection of public funds and will, where appropriate, seek to recover its costs arising from any formal enforcement action taken.

10. Monitoring

This Corporate Sanction and Enforcement Policy and any enforcement action taken under it will be monitored by reports to Corporate Leadership Team and/or reports to Cabinet and Committees by the relevant service heads.

11. Review of the corporate enforcement policy

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

12. Availability of this corporate enforcement policy

This policy is available on our website at www.rushmoor.gov.uk. If you would like a paper copy and/or you would like to comment on the policy, please contact us by:

Emailing:

customerservices@rushmoor.gov.uk

Telephoning: 01252 398399

Or by writing to: Rushmoor Borough Council
Council Offices,
Farnborough Road,
Farnborough
Hampshire GU14 7JU

If you need this policy in another format, please
contact us.

This policy has been prepared with regard to:

- The Regulatory Enforcement and Sanctions Act 2008
- Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 SI665/2009

- Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 SI670/2009
- Legislative and Regulatory Reform Act 2006
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007
- The Regulators' Code 2014
- The Equality Act 2010
- The Code for Crown Prosecutors 2018
- Criminal Proceedings and Investigations Act 1996 Code of Practice
- Code of Practice for Victims of Crime (updated 10 June 2024)
- Data Protection Act 2018
- EU General Data Protection Regulations (GDPR).