

**Ryedale District Council
Corporate Enforcement Policy
2019**

DRAFT

Version Control

Version	Description of version	Effective Date
Version 1	Original Margaret Wallace	11/11/2019
Version 1.2	Amendments Olivia Steel	21/11/2019
Version 1.3	Amendments Margaret Wallace	25/11/2019
Version 1.4	Amendments Tony Galloway	26/11/2019
Version 1.5	Amendments Glen McClusker	27/11/2019
Version 1.6	Amendments Stacey Burlet	05/12/2019
Version 1.7	Amendments Serena Williamson	10/12/2019

DRAFT

Contents

Part One: Introduction	
Introduction	
Principles of Regulation	
Regulatory Code	
Areas We Regulate	
Part Two: Policy and Legislative Framework	
Policy	
Legislative Framework	
Policy Scope and Deviation	
Information Sharing	
Part Three: Our Approach to Non-Compliance	
Authorisation of Officers	
Non-compliance	
Identifying the Need for Action	
Conduct of Investigations	
Risk Assessment	
Decision to take Enforcement Action	
Enforcement Good Practice	
Shared Enforcement	
Complaints and Appeals	
Performance Monitoring	
Part Four: Enforcement Powers	
Compliance, Advice, Guidance and Support	
Voluntary Undertakings	
Statutory (Legal) Notices	
Financial Penalties	
Refusal	
Court Orders	
Simple Caution	
Prosecution	
Proceeds of Crime	

Part One: Introduction and Scope of Policy

Ryedale District Council is responsible for undertaking enforcement activity across a wide range of Council services. Our aim is to protect the interests, safety and wellbeing of all those who live, work and visit the Ryedale area.

This policy is an overarching policy that applies to all Council services with enforcement duties. Ryedale District Council is committed to following good enforcement practice. We recognise that clear enforcement practice is essential for public confidence in upholding the integrity of the regulatory regimes that we administer. This Policy will set out the council approach to compliance and enforcement activities that is in line with principles of good regulation.

The Policy will be published on Ryedale District Council Website.

The Principles of Good Regulation

The legislative and regulatory reform (*Regulatory Functions*) order specifies that regulatory functions that are excisable by the Council must have regard to the regulatory code of practice.

The adoption and application of the Policy demonstrates the Council's compliance with the principles of section 21 of the Legislative and Regulatory Reform Act 2006 and is a significant part of evidencing our compliance with the Regulators Code.

We will exercise and regulate activities in a way which is:

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

The Regulators' Code

[The Regulators' Code](#) came into statutory effect under the [Legislative and Regulatory Reform Act 2006](#) and provides a clear, flexible and principles-based framework for how regulators enforcement action will be carried out with regard to the principles specified in this code.

In certain instances, we may conclude that a provision in the code is either not relevant or is outweighed by another legislative provision. We will ensure that any decision to depart from the code will be properly reasoned, transparent and based on material evidence and documented.

The policy is intended to provide guidance to officers, businesses, consumers and the public. Officers operating in a regulatory and enforcement capacity for the Council are expected to act in accordance with this policy

Areas we Regulate

This policy was developed in conjunction with Council enforcement services. Some of these regulatory functions are not within the scope of the legislation but it is considered best practice that all regulatory services are covered by the corporate enforcement policy.

We deliver regulatory services in a number of areas including (but not exhaustive):

- Environmental protection
- Anti-social behaviour
- Environmental Crime
- Food standards and safety
- Licensing
- Health and safety
- Private sector housing
- Waste
- Planning
- Animal welfare
- Fraud
- Parking
- Building Control (need to check)

Part two: Policy & Legislative Framework

This policy provides a strategic framework to demonstrate Ryedale District Council compliance with its statutory duties under the Legislative and Regulatory Reform Act 2006. This requires that the Council in the discharge of some of its regulatory functions is to maximise efficiencies in the way Council's regulate in order to reduce the burdens on business whilst maintaining standards. The policy is central to the way the Council deploys it's regulatory services and so it ensures that proper arrangements are in place to enable resources to be used efficiently and effectively.

Legislative Framework

We will act in accordance with the relevant Legislation, guidance and case law as appropriate, when investigating breaches of regulatory compliance and when considering enforcement action including (but not limited to):

- [Human Rights Act 1998](#)
- [Data Protection Act 2018](#)

- [General Data Protection Regulation \(GDPR\) 2018](#)
- [Regulation of Investigatory Powers Act 2000](#)
- [Police and Criminal Evidence Act 1984 Codes of Practice](#)
- [Criminal Procedures and Investigations Act 1996](#)
- [Legislative and Regulatory Reform Act 2006](#)
- [Code for Crown Prosecution](#)
- [Regulatory Enforcement and Sanctions Act 2008](#)
- Regulators' Code 2014
- [Criminal Justice and Police Act 2001](#)

The Council's 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.

Policy Scope

This corporate enforcement policy applies to all service areas setting out the Council's intended enforcement approach and guidelines. It also provides a framework for our enforcement officers that ensures their powers are transparent and consistently applied.

Officers that undertake enforcement covered by this policy will be trained and authorised to discharge enforcement powers on behalf of Ryedale District Council under the scheme of delegation and the authorised officers will act in accordance with this policy

Under the corporate policy sits a range of additional departmental enforcement policies. This is because for some services more specific detailed enforcement is needed to explain the application of enforcement powers and imposition of penalty fines.

Deviation from the Policy

This policy indicates what to expect by the way of enforcement, however the policy cannot provide prescriptive detail because the circumstances of each individual case, the law being applied, and the evidence available are likely to vary substantially. If there is a need to deviate from the policy this will be done where it is justifiable, and the reasons are recorded and in consultation with the Head of Service and Corporate Governance.

Information Sharing

The Crime and Disorder Act 1998 (Section 5) places a duty on us to do all we can to reasonably prevent crime and disorder in our area. The Council will fulfil this obligation by sharing information regarding its investigations with other Council services and partner agencies. All disclosures will be in accordance with the provision of the General Data Protection Regulations (GDPR) 2018 and the Data Protection Act 2018 and Ministry of Housing, Communities and Local Government and other Local Authorities.

Agencies we may share information may include, but not exhaustive:

- Health and Safety
- Environment Agency
- Police

- Department of Business Energy and Industrial Strategy
- Food Standards Agency
- Fire Brigade
- HM Revenue and Customs
- NHS
- Registered Social Landlords
- Housing Associations

Part Three: Our approach to Non-compliance

Authorisation of Officers

The Council's enforcement officers will be authorised to undertake enforcement action once their line manager and the delegated authorising officer (usually a Director/ Head of Service) is satisfied that they are competent to do so. Assessment of their competency is based on a number of factors and can include a period of assessment, qualifications, experience and/or specific training.

The Council at times may also appoint representative outside bodies to carry out enforcement functions where we consider this appropriate and there are powers for us to do so, they will also be bound to follow this policy.

Compliance/Non-compliance

A fair and proportionate approach will be taken in dealing with breaches of Legislation which are regulated and enforced by Ryedale District Council. Raising awareness and promoting good practice in regulated areas is the first step to preventing breaches, officers of the Council will signpost to guidance on aspects of the law where requested to do so.

The Council will strive to resolve any issues when the law has been broken without taking formal action when minor offences have been committed and the Council is confident that corrective action will be taken.

However, the Council may on occasion when the breach is considered serious and/or informal action is not appropriate the Council will take immediate enforcement action without notice and in accordance with Legislative guidance and regulations set out with an enforcement services.

Identifying the need for action

We may identify the need for enforcement action in a number of ways including (but not limited to):

- Scheduled and intelligence-led inspections
- Response to a complaint or referral from a third party
- Request for assistance for enforcement action or advice
- Some enforcement services have officers patrolling the streets
- Sampling visits
- Test purchases
- Requests for subsidised financial assistance to improve a premises

Where we consider it appropriate to inspect/investigate a business, premises, or activity to determine whether a risk of non-compliance exists we must do so. We will usually give you notice that we intend to visit unless we have specific reason to believe that an unannounced visit is more appropriate.

Conduct of Investigations

Enforcement action may result in either civil or criminal proceedings being instituted by the Council. The process that will be followed by officers in the investigation of alleged breaches of the law will depend on whether civil or criminal proceedings are considered. As the enforcing authority in any proceedings the burden of proof falls to the Council.

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice:

- [Criminal Procedure and Investigations Act 1996](#)
- [Regulation of Investigatory Powers Act 2000](#)
- [Police and Criminal Evidence Act 1984](#)
- [Criminal Justice and Police Act 2001](#)
- [Human Rights Act 1998](#)

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

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

We will provide the individual/ business with an opportunity to discuss with us the advice given, actions required, or decisions taken in relation to non-compliance, except where we need to take immediate enforcement action to respond to or prevent serious or imminent risk.

Notification Alleged Offenders

If the Council receives information (for example from a complainant) that may bring enforcement action against a business or individual it will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.

During the progression of enforcement investigations (prior to any convictions), business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and in accordance with the Data Protection Act 2018 and the General Data Protection Regulations 2018 (or subsequent amendments)

Risk assessment

The following factors will be taken into account when allocating resources:

- Severity and scale of potential or actual harm
- Existence of any continuing risk or breach of law
- Individual or businesses past performance in complying with relevant legal responsibilities
- Current enforcement priorities of the relevant service
- Practicality of achieving results including any evidential gap
- Wider relevance of the event, including serious public concern and interest
- vulnerability of any group affected

Decision to take enforcement action

The Council will ensure that the allocation of regulatory efforts and resources will be targeted on the basis of assessment of risk to regulatory outcomes, so resources are focused on those least likely to comply and where risk is highest.

Inspections may take place on targeted trade sectors or themes to tackle local and national priorities either working alone or with our partners. The Council will focus on compliance breach or breaches that pose serious risk to regulatory outcome and where there is a likelihood of non-compliance.

The decision to use enforcement action will be taken on a case-by-case basis and, to ensure consistency of approach, in accordance with this and any other policies which may be applicable. The action taken, which may be immediate, will be proportionate to the gravity and nature of the non-compliance.

In every case a decision to take enforcement action will consider all relevant factors:

- Past compliance and potential future risks
- Evidence of a recognised external accreditation a management and compliance and willingness to comply
- That businesses or individuals take action to deal immediately with serious risks and areas of non-compliance
- Eliminate financial gain or benefit from non-compliance
- Repair the harm done by the offence, where appropriate
- Ensure that individuals and businesses who breach prescribed conditions or legislative requirements, and directors, employees or managers who fail in their responsibilities are held to account, which may include bringing alleged offenders before the courts

The appropriate use of enforcement powers is important both to secure compliance with the law, and to ensure that those who have duties may be held to account for breaches of legislation, or causing

harm to the community. It is also important that compliant business and individuals can be assured that action is targeted against the worst offenders, and that their compliance and efforts are part of a coherent system.

Enforcement Good Practice

We recognise that robust enforcement is essential for public confidence in upholding the integrity of the regulatory regimes that we administer, but also that good, proportionate regulation is supportive to the economic vitality and growth of the economy and local businesses.

We will not hesitate to take all necessary enforcement action against those who commit serious offences, flout the law, and fail to follow advice or warnings to achieve compliance, or breach matters that are of key priority to the Council. If there is a serious or imminent risk of harm, danger, nuisance or injury then we will take immediate formal enforcement action as required.

We are, however, more likely to offer advice or a warning in the first instance if the breach is not so serious as to require immediate enforcement action, if it is not a persistent breach, if there has been a history of good compliance, or we are confident there will be compliance. There are, however, breaches, which the council considers necessary to adopt a zero tolerance approach towards for the protection of the quality of life of its residents, and these will be enforced without giving a warning.

Shared Enforcement

There will be occasions where we will need to work with other agencies by carrying out joint inspections, in accordance with jointly agreed protocols for example with the Police, Fire Service etc.

In determining the most appropriate form of investigation and enforcement action, officers will have regard to other agencies' interests as far as is reasonably practicable. Where enforcement action is being taken by another service, we will provide all reasonable assistance including witness statements and sharing evidence (subject to legal and data protection constraints).

Publicity

On occasion the council may publicise information about enforcement action that it has taken in line with [publishing sentencing outcomes](#). This will be done once an investigation has been brought to a conclusion via a successful prosecution in court.

Performance Monitoring

The Council will measure the amount of enforcement action taken quarterly and will report to Overview and Scrutiny Committee on the compliance of our legislative requirements on a quarterly basis.

Review of Enforcement Policy:

This policy will be reviewed every three years, minor amendments to changes in law will be amended at the discretion of the relevant strategic Head of service and brought to the attention of the Chairperson of the relevant Committee that oversees the services that deliver the functions covered in the Policy

Complaints and Appeals

We are always willing to discuss the reasons why we have acted in a particular way or asked you to act in a particular way. In the first instance we will ask you to speak with the enforcement officer involved in your case.

Where we take formal enforcement action, there is often a statutory right to appeal against a regulatory decision or if we fail to act in accordance with the Regulators Code. We will always tell you about this at the appropriate time.

We manage complaints about our service, or about the conduct of our officers, through our Corporate Complaints Policy. Details can be found at ryedale.gov.uk/contact/comments-compliments-and-complaints-procedure

DRAFT

ANNEX A- Overview of Potential Regulatory Interventions

The range of civil and criminal enforcement options available to Ryedale District Council is wide. Any enforcement carried out by our authorised officers will be set out in legislation or under national/local policy. Our officers will comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice. This is a summary of the common categories of enforcement we may impose, however this list is not exhaustive

Compliance, Advice, Guidance and Support:

We will use compliance advice, guidance and support as a first response in many cases where breaches of legislation are identified. When advice is given it will normally be put in writing unless the breach is a very minor or the matter is rectified on spot.

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** (sometimes called an ‘**informal caution**’) will set out what should be done to rectify the breach and to prevent reoccurrence. 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 may be presented in evidence should the issue escalate to the court

Mediation Services

Enforcement officers may consider a referral to mediation services. Mediation services is an impartial and confidential service that provides a process for appropriate disputes to reach agreement on a range of issues such as noise, rubbish, pets, damage to property, harassment, boundaries, fences and shared areas.

Voluntary Undertakings

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

Statutory (Legal) Notices

In respect of non-compliance, we have the power to issue statutory notices. Such notices are legally binding and fees will be charged for the service of some notices. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution.

A statutory notice will clearly set out actions which must be taken and the timescale within which action 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.

Financial Penalties

The council has powers to issue fixed penalty notices or penalty charges in respect to non-compliance. We are only able to issue fixed penalty notices when we have prescribed powers to do so. If fixed penalty notices are available, their issue is at our discretion.

In some circumstances, in particular where non-compliance are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice. A fixed penalty notice is not a criminal fine and does not appear on an individual's criminal record.

If a fixed penalty is paid in respect of a breach, we will not take any further enforcement action. However, payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. If a fixed penalty is not paid, we may commence criminal proceedings or take other enforcement action in respect of the non-compliance.

Injunction Action Enforcement Orders

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 that may lead to imprisonment and/or a fine.

Simple Caution

We have the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution.

A simple caution includes a formally documented admission of guilt, but is not a form of sentence, nor is it a criminal conviction

The caution will appear on the offender's criminal record. It is likely to influence how 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 for Adult Offenders](#))

Prosecution

We may prosecute in respect of serious or recurrent breaches, or where other enforcement action has failed to secure compliance. When deciding whether to prosecute we will reference the provisions of [the Code of Crown Prosecutors](#). Prosecution will only be considered when we are satisfied that there

is sufficient evidence to provide a realistic prospect of conviction against the defendant(s), and that prosecution would be in the public interest.

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).

If the evidential test is satisfied a prosecution will usually take place unless there are public interest factors tending against prosecution which outweigh this. The more serious the offence or the offender's record of breaches/criminal behaviour, the more likely it is that the prosecution will be required in the public interest. The public interest must be decided on the merits of each individual case and making an overall assessment.

Any successful prosecution will result in a criminal record. The sentence that the court imposes will depend on the legislation involved, the seriousness of the offence, any mitigating factors, and the courts sentencing guidelines.

Where a business is concerned, we will consider the management chain and the role played by individual directors and managers. We will take action where an inspection or an investigation reveals that the offence was committed with management knowledge or consent, or to have been attributable to any neglect on their part. We may also seek disqualification of directors under the Company Directors Disqualification Act 1986.

Proceeds of Crime

Any money or assets earned because of, or in connection with, an offence can be recovered under the Proceeds of Crime Act 2002. In relevant cases, we will consider taking action under the Proceeds of Crime Act to confiscate the proceeds of those who benefit from criminal conduct.

Refusal/Suspension/Revocation of Licences or Permissions

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