

Environmental Enforcement Policy & Procedure

‘A Clean & Green Rossendale’

2014

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Background

This document sets out Rossendale Borough Council's principles, priorities and procedures for dealing with environmental enforcement in the borough. It has been developed to reflect changes in and the limited nature of the Council's resources and capacity with a view to setting out clearly how the service will be delivered. Environmental Health Enforcement is a separate service and not included in this document.

Relevant Legislation

The core areas of environmental enforcement and legislation are:-

- Accumulations of Waste – s4 Prevention of Damage by Pests Act 1949; s79 & 80 Environmental Protection Act 1990; s78 Public Health Act 1936;
- Fly tipping – s33, s34 & s59 Environmental Protection Act 1990; s
- Trade waste & duty of care – 34 & s47 Environmental Protection Act 1990; s5 Control of Pollution (Amendment) Act 1989;
- Household waste bin enforcement – s46 Environmental Protection Act 1990;
- Dog Control Orders – Fouling of Land by Dogs Borough of Rossendale Order 2009; Dogs on Leads Borough of Rossendale Order 2009, Dogs on Leads by Direction Borough of Rossendale Order 2009, Dogs Exclusion Borough of Rossendale Order 2009; s59 Clean Neighbourhoods & Environment Act 2005;
- Nuisance Parking & Abandoned Vehicles – s3, s4 & s6 Clean Neighbourhoods & Environment Act 2005 & s3 & s4 Refuse Disposal (Amenity) Act 1978;
- Litter – s87, s88, s92A-C, s93 & s94 Environmental Protection Act 1990; s78 Public Health Act 1936;
- Land and property detrimental to the amenity - s215 Town & Country Planning Act 1990;
- Graffiti & Fly posting – s43-52 Anti-Social Behaviour Act 2003, s1 Criminal Damage Act 1971; s215 Town & Country Planning Act 1990;

Principles of Enforcement

Enforcement is any formal or informal action taken to ensure compliance with relevant legislation. The options for enforcement may differ according to the legislation applied in a particular situation, but the principles of application should remain consistent.

Enforcement includes visits, inspections, verbal and written advice on legal requirements and good practice, assistance with compliance, written warnings, the serving of statutory notices, issuing fixed penalty notices, formal cautions, prosecution, works in default, injunctions and liaison and co-operation with other enforcement authorities and organisations where appropriate.

The Council aims to carry out its waste enforcement policy in a fair, equitable and consistent manner.

Enforcement Options Available

- Informal action & advice - written or verbal
- Formal statutory notice
- Formal caution
- Prosecution
- Execution of works in default where the recipient of a statutory notice has not complied with the notice
- Fixed penalty notices for specific offences where these are available and have been approved by the Council
- No action – where there is insufficient evidence to pursue action, or where it may not be cost effective to continue, or in the public interest.
- Referral to another agency – where another agency e.g. Environment Agency has more effective or appropriate legislative powers to deal with an issue

Informal Enforcement

Many people, having had a problem for which they are responsible drawn to their attention, will be anxious to comply with their statutory obligations. In such cases the enforcement officer's role will be to guide and support. In most cases the first contact with a person reported to the Council or believed to be causing or permitting an offence, will be by advisory letter or verbal communication.

This initial communication will clearly identify the nature of the complaint or problem and any remedial works that are required. The officers will express requirements or suggestions in a manner that is clear and readily understandable and where appropriate will include a timescale for compliance.

Informal written warnings may be issued to make clear that any further breaches of legislation will be treated seriously and that these may be subject to enforcement action.

Formal Enforcement

Formal Enforcement may be used where the Council has exhausted all informal enforcement provisions. This may include the issue of a statutory enforcement notice of some description which may require the recipient to undertake a certain course of remedial action in order to avoid legal proceedings.

The Council would consider formal action where:

- a) An informal approach has not resolved the situation
- b) The legislation specifies that the Council must serve a notice and the offence is of a serious nature
- c) There is more than one individual or organisation involved and they need to cooperate and agree in carrying out works and sharing costs etc.

Where an appeal against formal action is possible, The Council will include clear advice on how to appeal in any formal communication. Whenever possible, the type of advice or information will be issued with the enforcement notice.

Works in Default

Where the requirements of the notice are not carried out, in many instances the Council is empowered to do whatever is necessary in execution of that notice and recover the costs of doing so from the person responsible. The Council will generally carry out work in default when:

- The person served with an abatement notice has failed to comply with the requirements of the notice
- There has been no appeal against the terms of the notice or any appeal made has not been upheld
- The Council regard work in default as likely to be a more appropriate or effective remedy than prosecution, or a successful prosecution has already been taken but the problem remains

The Council may also carry out work in default on behalf of the person responsible where a written request and an undertaking to pay is received from them.

In deciding whether to carry out work in default, the Council will consider:

- Whether it is necessary to carry out the works in the public interest
- The costs involved in carrying out the works
- The wishes of the person responsible for the problem
- Whether the evidence available provides a realistic prospect of defending the Council's action in the event that recovery of costs is contested by the person responsible.

The Council may recover the costs of the work from the person responsible as a civil debt or by placing a charge on the property, where legislation permits this.

Fixed Penalty Notices

Fixed penalty notices can be issued for certain offences and they allow individuals or businesses to discharge their liability for an offence, avoiding prosecution and a criminal record.

Where an offence takes place that an Enforcement Officer deems appropriate for a Fixed Penalty Notice to be served, the Officer will issue the Notice at the time of the offence or within a short time of it occurring. Fixed Penalty Notices will issued in accordance with the Council's Procedure for issuing Fixed Penalty Notices and will only be issued where there is enough evidence to prosecute an offender.

If the Fixed Penalty Notice goes unpaid an offender may be prosecuted for the original offence.

Simple Caution

The issue of a Simple Caution will be considered as an alternative to prosecuting an offender. A Simple Caution is used to deal quickly and simply with those who commit less serious crimes. It aims to divert offenders away from court, and to reduce the likelihood that they will offend again. If an individual who has been issued with a Simple Caution offends again they're more likely to be prosecuted for the further offence unless the second offence is a minor offence unrelated to the first or 2 years or more have elapsed since the original offence.

A Caution will only be considered appropriate where:

- there's evidence an offender is guilty
- the offender is 18 years of age or over
- the offender admits they committed the crime
- the offender agrees to be given a caution

A simple caution is not a criminal conviction and when issued by a local authority it will not be recorded on the Police National Computer. However it will be used to consider appropriate action should a cautioned individual commit further offences, and it may be used in court as evidence of bad character, or as part of an anti-social behaviour order (ASBO) application.

Prosecution

Officers will follow guidance in the Crown Prosecution Service's Full Code Test to determine whether it is appropriate to pursue a prosecution of an offender. This will include taking into account the following factors:-

- The evidence obtained against the offender
- Whether it is in the public interest to prosecute
- The seriousness of the offence
- The level of culpability of the offender
- Any previous incidents / offences
- The impact on the community
- Failure to comply with a statutory notice or other formal action
- Whether any other methods of resolving or disposing of the matter may be more appropriate or effective
- Any attempt to resolve the matter out of court e.g. simple caution, Fixed Penalty Notice
- Any potential defences of the offender and the likelihood of their ability to establish that defence

In pursuing and preparing a prosecution case Officers will follow the Police and Criminal Evidence Act 1984 and relevant Codes and the Criminal Procedure and Investigation Act 1996.

Prosecution of an offender will only be authorised following review of a case by a Manager with the support of a Legal Officer.

Priorities for Environmental Enforcement

One of the Council's Core priorities is 'A Clean & Green Rossendale' and the Environmental Enforcement service is an important element of this delivering against this priority. The Council has prioritised the different elements of the Environmental Enforcement service according to the level of need and the Council's ability to deliver an effective service. This means that some areas of enforcement will be a lower priority or delivered by a partner organisation.

Please note the following timescales are for guidance only and although officers will use their best endeavours to work to them they may be subject to change during periods of high demand, leave or sickness.

Environmental Issue	Delivered by	Details of response / Timescale
<p>Fly tipping – serious offence, one of the highest reported environmental issues in Rossendale, high impact on environment</p>	<p>Caretakers Environmental Enforcement Officer Waste Operatives External Agency</p>	<p>1) Small scale fly tipping on highway / council owned land in town centres: Response - Caretakers will assess, remove / arrange removal and pass any evidence onto Enforcement Officer. Timescale – Site visit within 3 working days of report. Clean up where on highway or council land within 7 working days</p> <p>2) Larger scale fly tipping in town centre / fly tipping not in town centre / fly tipping on private land <u>and</u> evidence is found or likely to be found. NB Environmental Enforcement Officer will only attend where further investigation likely / required Response – Environmental Enforcement Officer will assess and seize any evidence and carry out an investigation Timescale – Site visit within 3 working days of report. Clean up where on highway or council land within 7 working days. Private land is owner's responsibility and advice will be given.</p> <p>3) Fly tipping where no evidence found or likely to be found Response – Where on council land or highway, clean up arranged. Where on private land, owner to clean up and advice given.</p>

		<p>Timescale – Clean up within 7 working days where on council land or highway.</p> <p>4) Very large scale incidents (tipper load or more), suspected illegal waste transfer sites</p> <p>Response – Incident will be referred to Environment Agency and liaison & support will be provided</p> <p>Timescale – Incident will be referred within 3 working days of initial report being received.</p>
Accumulations of Waste – one of the highest reported environmental enforcement issues in the borough	<p>Enforcement Officer</p> <p>Caretakers</p>	<p>1) Accumulations on private land in or near town centre</p> <p>Response – Caretakers carry out initial visit and give owner / occupier letter or advice about removal. If still there after 7 days issue referred to Environmental Enforcement Officer who will issue statutory Notice.</p> <p>Timescale – initial visit & advice within 3 working days</p> <p>2) Accumulations on private land out of town centres</p> <p>Response – Environmental Enforcement Officer to carry out site visit and give owner / occupier letter / advice about removal. If accumulation still present after 7 days Statutory Notice to be issued followed up by works in default or prosecution if required / appropriate.</p> <p>Timescale – Initial visit & advice within 3 working days</p> <p>3) Accumulations of dog fouling on private land</p> <p>Response – Environmental Enforcement officer will carry out site visit and give owner / occupier letter / advice about removal. If still present after 48 hours a Statutory Notice will be issued for removal within 48 hours.</p> <p>Timescale – Initial visit & advice within 3 working days</p>
Trade waste / duty of care	Enforcement Officer	<p>Action will only be taken where reason to believe business does not have a trade waste arrangement in place <u>and</u> breach of environmental legislation has occurred or is likely to occur.</p> <p>Response – Visit to premises with advice / request for waste transfer documentation. Followed up with Statutory Notice & FPN or prosecution as appropriate.</p> <p>Timescale – Initial visit within 10 working days of report /</p>

		evidence found.
Land & Property Detrimental to the Amenity (s215)	Regeneration Team Manager / Officers	<p>Action taken as part of targeted empty properties work. Enforcement will require improvement works to be carried out.</p> <p>Response - 3 stage process: 1st letter; 2nd letter with Notice requiring ownership & use details; Statutory Notice. Owners / occupiers will be prosecuted should they not comply with the Notice.</p> <p>Timescale – 28 days to 12 months depending on level of action required</p>
Abandoned Vehicles	Enforcement Officer	<p>The Council has a statutory duty to remove any vehicles which appears to have been abandoned.</p> <p>Response – Environmental Enforcement Officer will carry out a site visit to assess the vehicle, including how long the vehicle has been in situ, if the vehicle is damaged, has a full or partial number plate, has waste inside, or an expired tax disc. A vehicle will not be deemed to have been abandoned for an expired tax disc only. Vehicles without a valid tax disc can be reported directly to the DVLA using the following link:</p> <p>http://www.dft.gov.uk/dvla/onlineservices/report_unlicensed.aspx</p> <p>Where a vehicle is deemed abandoned a Statutory Notice will be affixed to the vehicle (on the highway) or issued to the owner of land (private land). Where a vehicle is deemed fit for destruction it can be removed immediately without Notice.</p> <p>Timescale – Initial assessment within 1 working day of a report being received.</p>
Nuisance Parking	Enforcement Officer	<p>2 or more vehicles for sale on the road</p> <p>Response – Site visit and informal advice given. If problem persists followed up by a Statutory Notice then FPN and / or prosecution as appropriate.</p> <p>Timescale – Initial site visit carried out within 10 working days</p>
Household waste bins	Operations Team Locality Officers	<p>Operations Team Locality Officers will follow a clear procedure in relation to side waste; contaminated recycling bins; and household bins left out.</p> <p>Response - All issues with household bins will only be responded to in where an investigation can or is likely to be able to be carried out.</p>

		<p>Locality Officers will take action including issuing a letter / advice, followed up by a Statutory Notice on all occupiers of the relevant household if there is a further incident, and the issue of a FPN or prosecution if appropriate.</p> <p>Timescale – Locality Officers will carry out a site visit within 5 working days.</p>
Dog Control Orders	Outside agency	<p>Response - Targeted patrols carried out in hotspot areas where intelligence received, once or twice a week, prioritising dog fouling.</p> <p>Timescale – Up to 10 working days from initial report</p>
Litter:	<p>Operations Team / external agency</p> <p>Enforcement Officer</p>	<p>1) On council land / highways (inc. adopted back streets)</p> <p>All litter on council land or highways will be dealt with by the Operations team who will arrange a clean up. Litter on Highways Agency land will be referred to the Highways Agency.</p> <p>1) Street litter outside relevant premises e.g. takeaways, pubs</p> <p>Response – Visit to premises with advice followed up by letter and Statutory Notice if required. Where it is intended to serve a Statutory Notice, the owner / occupier of relevant premises will receive 21 days notice of this to be allowed to make representations for the Council to take into account. If no compliance an FPN can be issued or a prosecution can be carried out.</p> <p>Timescale – Initial site visit within 10 working days.</p> <p>2) Litter on private land</p> <p>Response – Visit to land with advice given and followed up with letter and Statutory Notice if required. If the Notice is not complied with works in default will be carried out. FPN or Prosecution will be considered if recurring problem.</p>
Graffiti:	<p>Enforcement Officer</p> <p>Operations Team</p>	<p>1) Offensive / racist</p> <p>Response – Environmental Enforcement Officer will assess if required and arrange for removal or obliteration of the graffiti, regardless of the location of</p>

		<p>the graffiti. If on private land contact will be made with the owner to advise of action taken. Where graffiti is racist or offensive to an equality group it will also be reported to the Hate Crime team at Lancashire Police.</p> <p>Timescale- 1 working day to assess and arrange removal / obliteration of graffiti as soon as possible. If on private land owner to be contacted as soon as reasonably practicable.</p> <p>2) Other</p> <p>Response – Environmental Enforcement Officer will assess and provide initial informal advice to property owner as a victim of crime. If graffiti remains and enforcement considered appropriate this will be followed up by a letter and (if required) Statutory Notice.</p> <p>Timescale – Initial site visit will be carried out within 10 working days of report.</p>
<p>Flyposting (see also flyposting policy)</p>	<p>Enforcement Officer</p> <p>Planning Team</p>	<p>1) Offensive or racist fly posting</p> <p>Response – Environmental Enforcement Officer will assess if required and arrange for removal or obliteration of the flyposting, regardless of the location of it. If on private land contact will be made with the owner to advise of action taken. Where fly posting is racist or offence to an equality group it will also be reported to the Hate Crime team at Lancashire Police.</p> <p>Timescale- 1 working day to assess and arrange removal / obliteration of fly tipping as soon as possible. If on private land owner to be contacted as soon as reasonably practicable.</p> <p>2) Fly posting on private land</p> <p>Response – A Licensing & Planning Enforcement Officer will visit and assess. Initial letter / advice will be given followed up by a Statutory Notice is required.</p> <p>If a street surface, structure or building on a street (not fronting onto a street) has been defaced by flyposting and graffiti or a build-up of flyposting, over time, this can be dealt with by an Environmental Enforcement Officer with initial advice / letter and followed up with a Defacement Removal Notice if appropriate.</p> <p>Timescale – initial site visit within 10 working days of report</p>

		<p>3) Fly posting on street furniture.</p> <p>Response – this will be referred to and dealt with by Lancashire County Council. Small easily accessible items in town centres will be removed by Town Centre Caretakers.</p> <p>Timescale – referral within 3 working days</p> <p>4) Maintained Council Land</p> <p>Response – where it is causing an obstruction to maintenance staff fly posted items will be removed. Otherwise they will be referred to an Enforcement Officer to contact offender and arrange removal.</p> <p>Timescale – Initial site visit within 10 working days. Removal requested / arranged within 7 working days.</p> <p>5) Unmaintained Council land</p> <p>Response – this will be referred to the Council's Facilities Management team to request / arrange removal.</p> <p>Timescale – Initial site visit within 10 working days. Removal requested / arranged within 7 working days.</p>
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Complaints

Officers will use their best endeavours to follow this Policy when delivering an Environmental Enforcement Service. Should any member of the public be unhappy with the level of service they have received, they should follow the Council's Complaint's procedure, a copy of which is available at www.rossendale.gov.uk or from the One Stop Shop, The Business Centre, Futures Park, Bacup.

Equal and Fair Treatment

Enforcement practices will be constantly monitored and reviewed to ensure that they are fair and equitable.

Human Rights

All enforcement action and investigations will be carried out in a manner that complies with the requirements of legislation and codes of practice governing the collection of evidence and investigatory powers. This will include any surveillance activity which will comply with both the Regulation of Investigatory Powers Act 2000 and the Data Protection Act 1998. Consideration will be given to ensure that any actions do not contravene rights conferred by The Human Rights Act 1998 or any other legislation.

Review of this Policy

This policy will be reviewed at regular intervals to ensure that it still reflects the current delivery of the Environmental Enforcement service.

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