

TITLE OF REPORT: ENFORCEMENT POLICY REVIEW

REPORT OF THE ACTING CORPORATE LEGAL MANAGER
PORTFOLIO HOLDER: COUNCILLOR MRS L. A. NEEDHAM

1. SUMMARY

- 1.1 This Report presents to Cabinet amendments to the Council's Statement of Enforcement Policy following a review carried out by the Corporate Enforcement Forum (CEF).

2. RECOMMENDATIONS

- 2.1 That the amended Statement of Enforcement Policy, as attached at Appendix A, be approved.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To update the Council's Statement of Enforcement Policy to ensure it complies with current legislation and is fit for purpose.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Policy requires amendment to ensure its policy is up to date. Alternative options were considered, including a more detailed policy requiring specific steps to be followed for each department. The CEF felt that a more flexible approach should be maintained to reflect the different types of enforcement activity carried out by the Council and work alongside departmental policies.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 There has not been any consultation with members as the policy does not apply to a specific ward. The portfolio holder was consulted on an advanced draft of the amended policy. There has been consultation with officers on the CEF, which includes 16 officers from different service areas within each Directorate.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 The Council's existing Statement of Enforcement Policy was produced in March 2004. The Policy is intended to work alongside departmental enforcement policies and procedures.

- 7.2 The CEF has been considering the Council's approach to enforcement and the Statement of Enforcement Policy over the last 12 months.
- 7.3 An audit of the Council's enforcement powers has been carried out by the CEF and Legal Services.

8. ISSUES

The Council's Approach to Enforcement

- 8.1 The CEF proposed to maintain the Council's flexible and consistent approach to enforcement. This is best achieved by having a policy that works alongside departmental enforcement policies and procedures to reflect the different types of enforcement activity undertaken by Council departments. The policy contains guidance for officers and basic requirements when carrying out enforcement action to ensure a consistent approach throughout the Council without being overly prescriptive. For example, a very prescriptive policy may not work effectively for both Benefits Investigation Officers pursuing a prosecution and Civil Enforcement Officers issuing a PCN.
- 8.2 The amended Policy sets out the Council's approach to enforcement. The inclusion of a mission statement setting out the Council's "consistent and proportionate approach to enforcement that is targeted and contributes to achieving the Council's priorities, policy aims and meets the needs of the community" helps to clarify the Council's approach. Proportionality is also included in the general principles to be taken into account when considering enforcement action in the amended Policy.

The Aims of Enforcement Action

- 8.3 The CEF thought that the policy should outline the Council's aims in taking enforcement action, and what it seeks to achieve. This helps to justify and demonstrate the value of the Council's enforcement action. Factors such as deterring future non-compliance, changing attitudes/behaviour and addressing harmful consequences are now included in paragraph 5 of the amended Policy.

Corporate Approach

- 8.4 The CEF has proved to be a useful Forum to help ensure that the Council adopts a corporate approach to enforcement where appropriate. This is most often the case where activity from an individual or business impacts a number of different Council departments, it is often possible for departments to work together to achieve the best possible outcome. This has now been incorporated into paragraph 4 of the amended Policy. The CEF has been meeting regularly over the last year, every 2-3 months, enabling officers to share information and best practice on cases that impact more than one Council department.

Authorisation

- 8.5 For enforcement action to be effective officers must ensure that they are authorised under the Council's Constitution/Scheme of Delegation to take enforcement action before doing so. This requirement has been included in the amended Policy to reinforce this to the relevant officers.

Proceeds of Crime Act 2002

- 8.6 Under the Proceeds of Crime Act 2002, the Council may in certain cases apply to confiscate the assets of an offender. This may be a useful option to the Council, and provides an opportunity to retrieve some of the costs of enforcement action. To raise the profile of this provision as a consideration when taking enforcement action, this has been included in the amended policy. It is recognised that the scope for utilising this provision is limited, as a consequence of which there are relatively few examples of Council's successfully retrieving monies confiscated by the Courts. Examples include a landlord being ordered to pay £53,635 following prosecution by Norwich City Council in October 2012, and in February 2011 a trader was ordered to pay £45,440.95 following a successful prosecution by Southwark Council for selling counterfeit goods.

Public Interest Test

- 8.7 The amended Policy includes the requirement to meet the public interest test prior to prosecuting an individual or business for an offence. This can be sometimes be a difficult test to apply to a specific case. To assist officers, the amended Policy includes a "Public Interest Matrix" as an additional appendix (see Appendix B: Public Interest Matrix). This document contains a checklist of considerations for officers to help decide whether the public interest test has been met, and whether a prosecution or caution is more appropriate. The document is adapted from a similar example in "Local Authority Investigations and Prosecutions" (Henriques and Winter), a resource used by Legal Services.
- 8.8 The amended Policy has been streamlined where appropriate, removing unnecessary wording and verbatim quoting from the Code for Crown Prosecutors.

9. LEGAL IMPLICATIONS

- 9.1 The Council's Statement of Enforcement Policy must be updated to ensure that the Council acts lawfully within its powers and complies with best practice.
- 9.2 It is Cabinet's responsibility to adopt the updated Policy in accordance with the Council's constitution.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no financial implications arising from this Report.

11. RISK IMPLICATIONS

- 11.1 It is important that the Council continues to operate in accordance with best practice to ensure that it is able to effectively manage its reputational risk whilst also exercising its legitimate powers in connection with enforcement activity effectively.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 8.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.3 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups. The amended Policy requires the principles of fairness, objectivity, transparency, proportionality and consistency to be taken into account when considering enforcement action.

13. SOCIAL VALUE IMPLICATIONS

13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12.

14. HUMAN RESOURCE IMPLICATIONS

14.1 The officer involvement required to comply with this Policy is factored into service plans and work plans.

15. APPENDICES

15.1 Appendix A - NHDC's amended Statement of Enforcement Policy.
Appendix B – Public Interest Matrix.
Appendix C - NHDC's existing Statement of Enforcement Policy.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

17.1 The Council's existing Statement of Enforcement Policy.