

**CABINET
9 JULY 2024**

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: CORPORATE STATEMENT OF ENFORCEMENT POLICY - REVIEW

REPORT OF: SERVICE DIRECTOR – LEGAL AND COMMUNITY & MONITORING OFFICER

EXECUTIVE MEMBER: THE LEADER OF THE COUNCIL: COUNCILLOR DANIEL ALLEN

COUNCIL PRIORITY: PEOPLE FIRST / SUSTAINABILITY

1. EXECUTIVE SUMMARY

This Report covers the review of the Council's Corporate Statement of Enforcement Policy (the 'Policy'). The Policy has proposed amendments to be approved, so that enforcement decisions and actions are up to date and consistent.

2. RECOMMENDATIONS

2.1 That Cabinet approve the amended Policy contained at Appendix A.

3. REASONS FOR RECOMMENDATIONS

3.1. To bring the Council's Corporate Enforcement Policy up to date.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 None.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1 This overarching Policy was reviewed by the Service Director – Legal & Community, Legal and Enforcement Officers, and as part of their internal Officer Corporate Enforcement Forum discussions. A copy of the Policy with proposed revisions was forwarded to the Leader in advance of drafting this report, for consideration and comment.

6. FORWARD PLAN

6.1 This report does not contain a recommendation on a key Executive decision as this is not a new Policy and the recommended changes are to update, in terms of administration, legislation and rewording of enforcement options.

7. BACKGROUND

7.1 The Corporate Enforcement Policy ('the Policy') was last updated in January 2022 and it therefore needs to be updated to reflect enforcement developments, as well potential changes following legislation.

7.2. All relevant enforcement departments were requested to update their Appendices, and have fed into the Policy as explained in section 5.1, Policy appended to this Report.

8. RELEVANT CONSIDERATIONS

8.1. The purpose of the Policy is to set out, in a clear manner, what the options are in respect of enforcement action. As a document that may be referred to in legal proceedings, it will still need to be legalistic and detailed.

8.2. This Policy was considered and updated where necessary, by staff from the various teams/departments of the Council. The covering 'general' introductory element of the Policy was considered, as indicated, by the Corporate Enforcement Forum and relevant amendments made.

8.3. The Policy sets out key principles that the Council will seek to follow before and during Council enforcement activity, and lists the types of enforcement options available following a breach of legislation. When bringing and defending enforcement action, the Council needs to be able to demonstrate that it has acted reasonably in deciding upon the most appropriate course of action in response to breaches of regulatory requirements.

8.4. Parties subject to enforcement action brought by the Council should be able to refer to the Policy in order to determine whether the enforcement action taken against them is consistent with the normal practices of the Council. Likewise, the Council can refer anyone to the Policy wherever an accusation is made that the Council is treating someone unfairly or, in their opinion, unduly harshly. The Policy will therefore be made available on the Council's website so that members of the public, including individuals and businesses being enforced against, can see what the Council's approach to enforcement is.

8.5. It is important to note that, whilst detail is helpful in setting out the approach to be taken by the Council in a given situation, each case will ultimately be decided on its own merits. If the Policy is too detailed and prescriptive it could fail to consider the inevitable grey areas that will exist from time to time and potentially to a particular course of action that may not be suitable in that situation. The Policy must contain enough detail to provide certainty as to what can be expected, whilst also not fettering the Council and/or officer's discretion.

8.6. In terms of the updated Policy, the summary of amendments is as follows:

- Section 3 - updates the general principles.
- Section 6 - minor wording changes for levels of Enforcement action.
- Section 11 - updates in respect of the change to 'cautions', once the Police, Crime, Sentencing and Court Act 2022's anticipated Code (yet to be finalised). See below at 8.8.
- Section 12 - updates in respect of the potential approach to be taken regarding repeat offenders and applications for Criminal Behaviour Orders.
- Section 13 - better aligns the overarching Policy with the Protocol on Unauthorised Encampments.
- Section 14 - deleting most of this as Licensing has a separate Appendix.
- Section 19 - updates in terms of Victim Rights to better reflect the options regarding the Council's enforcement and complaint.

- 8.7. With respect to the Appendices to the main cover Policy (i.e. A-H), all have been reviewed, as indicated, with minor amendments summary (language and/or legislation/ responsibility for service concerned) as follows:
- A - Revenues recovery (minor amendments to include property sale post charging order);
 - C - Licensing (areas that now fall under Licensing post reorganisation & legislative/ improvement notices);
 - D - Community Safety (areas that fall under Community Safety & administrative name changes post reorganisation);
 - F - Parking (updated Guidance and Traffic order references, changing reference to Car Parking Zones; reference to Electric Vehicle charging; & observation periods); and
 - H - Fraud Prevention (minor updates, include reference to cautions).

Members should note: that Appendix B - Environmental Health and Appendix E Planning were *redrafted*. *Appendix B shows no tracking* and *E is shown*. Appendix G - Housing has no changes.

- 8.8. One potential issue for Local Authorities, was the anticipated introduction of new types of cautions, under the Police, Crime, Sentencing and Courts Act 2022. The legislation proposes to remove simple cautions – something that Local Authorities have been able to use as an effective out of court (and sometimes in court) ‘disposal’ of criminal matters. The new diversionary or community cautions under this Act, are designed to be condition related (e.g. rehabilitation, reparation, financial penalty) and can only be administered by an ‘*authorised person*.’ There is apparent uncertainty at this stage whether Local Authority Officers can administer these – and this was to be clarified via a finalised Code of Practice for Diversionary and Community Cautions. At the point of finalising the report the relevant part of the legislation under the Act is not in force and the Code remains a draft. The Policy therefore updates language to potentially allow for the administration of these cautions – with the continuation of simple cautions until the relevant sections of the Act are in force and the Code has been finalised.

9. LEGAL IMPLICATIONS

- 9.1 Some relevant legal implications are set out in the report above. Otherwise, the Council’s Constitution at paragraph 5.7.1 states that the Cabinet may prepare and agree to implement policies and strategies other than those reserved to Council.
- 9.2 Also, paragraph 5.7.4 of the Constitution which states that it is for the Cabinet to exercise the Authority’s duty in Section 17 of the Crime and Disorder Act 1998 to reduce crime and disorder.
- 9.3 Section 23 of the Legislative and Regulatory Reform Act 2006 brought in the Regulators’ Code 2014 which states that regulators whose functions are specified by order under section 24(2) of the Act must have regard to the Code when developing policies and operational procedures that guide their regulatory activities. This is covered in the body of the general overarching Policy.

10. FINANCIAL IMPLICATIONS

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

11. RISK IMPLICATIONS

- 11.1. Good Risk Management supports and enhances the decision-making process, increasing the likelihood of the Council meeting its objectives and enabling it to respond quickly and effectively to change. When taking decisions, risks and opportunities must be considered.
- 11.2. Not having an effective and up to date Enforcement Policy leaves the Authority at risk of being unprepared or otherwise ineffective at enforcing matters affecting the district. If the Council's Policy is not up to date it could face criticism at Court and be left open to challenges from defendants and defence lawyers.

12. EQUALITIES IMPLICATIONS

- 12.1. 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. As such any Policy should operate within these (as well as other) legislative principles.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and "go local" requirements do not apply to this report as this is not a procurement or contract.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known Environmental impacts or requirements that apply to this report/ Policy.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 The officer involvement required to comply with these statutory obligations are factored into Service and Action plans.

16. APPENDICES

- 16.1 Appendix A: Corporate Enforcement Policy indicating any tracked changes to be approved NB 8.7 comments re Appendix B, above.

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

18.1 Link to current Policy on website: <https://srvmodgov01.north-herts.gov.uk/documents/s18479/Corporate%20Enforcement%20Policy%20update.pdf>