

**CABINET
18 DECEMBER 2018**

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: CORPORATE STATEMENT OF ENFORCEMENT POLICY REVIEW
REPORT OF: LEGAL REGULATORY TEAM MANAGER
COUNCIL PRIORITY: PROSPER AND PROTECT / RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

1.1 This Report reviews the Council's Corporate Statement of Enforcement Policy (the 'Policy') so that enforcement decisions and actions are consistent throughout the Council.

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 The draft Policy (as amended) was discussed at Political Liaison Board prior to presentation at Cabinet. The Policy was also presented to the Senior Management Team for consideration and comment.

6. FORWARD PLAN

6.1 This report contains a recommendation on a key decision and was first referred to in the Forward Plan on 24 April 2018.

7. BACKGROUND

7.1 The Corporate Enforcement Policy ('the Policy') was last updated in July 2013 and it therefore needs to be updated to reflect new legislative and enforcement developments, as well as the Council's recent Senior Management Restructure.

7.2 All relevant enforcement departments were requested to update their policies and have fed into the Policy contained at Appendix A.

8. RELEVANT CONSIDERATIONS

8.1 The purpose of the Policy is to set out, in a clear and easy to understand way, what the Council's options are with respect to enforcement action.

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8.2 Previously, each section within the Council that engaged in enforcement activity had its own, area specific policies. This Policy brings together all of those separate policies and protocols into one definitive Policy, which are appendices to it as follows:

- Revenues Recovery (pages 9 – 10)
- Environmental Health (pages 11 – 34)
- Licensing (pages 35 – 36)
- Community Safety (37 – 41)
- Planning Enforcement (42 – 52)
- Parking Enforcement (pages 53 – 58), and
- Access to Housing (page 59).

The appendices to the Policy have been prepared by different areas of the Council; therefore there are some stylistic and practical differences in their format and their content (with some being more detailed than others, given some areas have more / less statutory Guidance or case law on the approaches to adopt).

8.3 It should be noted that where a service area is legally bound to produce its own general policy going beyond merely enforcement practices, as is the case with Licensing, for example, which must produce a policy addressing how the Council exercises its licensing functions, then those statements of policy shall remain separate. This Policy is solely concerned with enforcement, and does not purport to cover other aspects affecting a service area.

8.4 Other than the newly included appendices, the most notable amendments to the Policy are:

- the updated reference to the Regulators' Code 2014 ("the Code"), which replaced the previous Concordat on Good Enforcement Practice on 6th April 2014. The Code, brought in under section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"), provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. Nearly all regulators, including local authorities and fire and rescue authorities, must have regard to it when developing policies and procedures that guide their regulatory activities (page 2).
- the updated general principles, brought in by section 21 of the Act, namely: that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent (page 2).
- circumstances in which the Council can opt to take no action in relation to some breaches: The decision whether or not to take action will turn on the facts of individual cases, and will be taken in consultation between the investigative officers, their service manager and the Service Director – Legal and Community, or those officers delegated to make that decision under a scheme of delegation (page 4).
- Unauthorised Encampments ("UE"): this is also addressed in the Policy for the first time. The detail contained in this section is provided in broad terms, as it could potentially be counterproductive to set out precise timescales that would allow those engaging in UE to maximise their stay at a given site without fear of enforcement action being commenced (page 7).
- A brief word on Licensing is also introduced into the amended Policy, although as previously mentioned, it is not intended that this Policy substitutes other specific policies in this area (for example the Statement of Licensing Policy, Gambling Act Statement or other Licensing specific areas such as Taxis or Animal licensing Policy).

Cabinet (18.12.18)

The newly introduced section on Licensing broadly sets out the ability to suspend and revoke licences, but also addresses the fact that in certain circumstances, officers are able to adopt a stepped approach to dealing with contraventions in order to avoid having to resort to more stringent action (page 7).

- 8.5 There is now also an extended section dealing with how the Council will consider the views of those affected by offences. Mainly, this updated section addresses the situation where complainants want the Council to act, but may not be willing to have their identities disclosed to the perpetrators. Having this added to the Policy is useful in ensuring that complainants know from the outset what is expected of them, and that without their co-operation the chances of the Council succeeding in carrying out its enforcement action can be hampered.
- 8.6 The Policy sets out a number of key principles that the Council will seek to follow before and during the carrying out of 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 legislation or policies.
- 8.7 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 unduly harshly through the use of enforcement powers. 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.
- 8.8 Finally, 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 take into account 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 therefore provide enough detail so as to provide certainty as to what can be expected, whilst also not fetter the Council and an officer's discretion.

9. LEGAL IMPLICATIONS

- 9.1 The Council's Constitution at paragraph 5.6.1 states that the Cabinet may prepare and agree to implement policies and strategies other than those reserved to Council.
- 9.2 Also, paragraph 5.6.4 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.

10. FINANCIAL IMPLICATIONS

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

11. RISK IMPLICATIONS

- 11.1 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.
- 11.2 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.
- 12.2 The review of the Corporate Statement of Enforcement policy does not have a direct equality impact. The policy now reflects the most recent legislative and enforcement developments. This ensures that enforcement action is carried out in an objective, proportionate and consistent manner. This eliminates discrimination or victimisation when the council carries out enforcement decisions and actions.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 The officer involvement required to comply with these statutory obligations are factored into service plans and work plans.

15. APPENDICES

- 15.1 Appendix A: Corporate Enforcement Policy 'clean' version
- 15.2 Appendix B: Corporate Enforcement Policy *showing tracked changes – this is available on the website page for the report only.*

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17. BACKGROUND PAPERS

17.1 None, other than the documents referred to above.