

JOINT COMMUNITY, ENVIRONMENT AND HOMES PDG REPORT

15 MARCH 2019

OPERATIONS DIRECTORATE ENFORCEMENT POLICY

Cabinet Members: Cllrs Clive Eginton, Colin Slade, Margaret Squires and Ray Stanley

Responsible Officer: Simon Newcombe, Group Manager for Public Health and Regulatory Services

Reason for Report: To provide Members with the updated Operations Directorate Enforcement Policy PH/EP/01/19. This policy was formerly the Public Health Services Enforcement Policy PH/EP/02/16 adopted in August 2016. The policy was due for review and has been expanded to encompass the remaining enforcement functions in the Operations Directorate within Housing Services and Street Scene Services.

RECOMMENDATION(S): That Cabinet recommends to full Council that the updated Operations Directorate Enforcement Policy attached in Annex 1 be approved.

Relationship to Corporate Plan: As a regulatory authority, enforcement activities are matters which overarch the Corporate Plan .

Financial Implications: There are no direct financial implications arising from adopting this policy other than to specify circumstances where the Operations Directorate is able to charge for enforcement actions (cost recovery). However, poorly managed enforcement and failure of legal proceedings can result in resources being used wasted and costs being awarded against the Council.

Legal Implications: If we do not have an appropriate enforcement policy in place for the statutory functions of the services within the Directorate we may not meet the relevant legal requirements that are our duty as a regulatory authority. Specifically, as set out in the Regulators' Code 2014 (Department of Business Innovation and Skills – now Department for Business, Energy and Industrial Strategy), the Code of Practice Powers of Entry 2014 (Home Office) and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008.

Risk Assessment: Having an adequate policy in place is essential to meet the legal requirements set out above and the principles of good enforcement. It also serves to inform officers and decision-makers of the framework under which they operate, in addition to providing information to those people, organisations and businesses which are regulated and those protected by regulation.

Not having an adequate policy therefore undermines the principles of good enforcement, can impact upon legal proceedings and may ultimately result in a failure to protect the public from harm.

Equality Impact Assessment: A full assessment is not necessary for this report. This policy has however been reviewed in accordance with the requirements of the Equality Act 2010. That review indicates the policy complies with the public sector Equality Duty. This is underpinned by virtue of the policy seeking to ensure the overarching principles of good enforcement are met as set out in section 1.1 and 1.2 of the policy and that all our enforcement activities are carried out in a fair, consistent and equitable manner irrespective of the otherwise protected characteristics of individuals subject to enforcement and regulatory action. More information is also provided in Section 3.0 of this report.

The policy does recognise there may be circumstances where alternative enforcement actions including no action are undertaken due to the vulnerability of the persons involved which may include a mental or physical disability. In these situations, any deviation from a standard policy approach will be considered on a case by case assessment in conjunction with available information provided by the individuals concerned and from any professional clinicians or therapists directly involved. Where appropriate this information will be included in the case merit test as set out in Section 5.17 of the policy.

1.0 Introduction

- 1.1 The purpose of this policy is to ensure compliance with Regulators' Code and the principles of good enforcement. It also serves to inform investigating officers and decision-makers of the framework under which they operate, in addition to providing information to those people, organisations and businesses which are regulated and those protected by regulation.
- 1.2 The target audience of this policy is investigating officers and decision-makers and service or Group Managers, Leadership Team, Cabinet, Legal Services and any person, organisation, company or business affected by regulatory action by the Operations Directorate. This includes Public Health and Regulatory Services, Housing Services and Street Scene Services.
- 1.3 The Operations Directorate is responsible for several different broad enforcement functions across a number of services and teams:

Public Health and Regulatory Services

- **Licensing** (hackney carriage and private hire drivers, vehicles and operators, alcohol sales, entertainments, temporary events/festivals, gambling, charity collections, animal establishments, caravan sites, scrap metal dealers, sex establishments and skin piercing/tattooists)
- **Environmental Health** (food safety, health and safety, private water supplies, communicable disease control, environmental permitting, air/land quality, noise and other statutory nuisances, pest control, filthy premises and drainage)
- **Private Sector Housing** (private sector housing conditions/fitness and renewal, rogue landlords, empty homes and houses in multiple occupation)

- **Anti-social behaviour** (closure orders, civil injunctions, community protection notices and public protection orders)

Housing Services

- **Tenancy breaches** (tenancy breaches within the Council's own housing stock, anti-social or disruptive behaviour by tenants, evictions and possession)
- **General tenancy management** (including provisions to undertake mandatory inspections and safety checks)
- **Unlawful occupation** (illegal squatting and unlawful subletting)

Street Scene Services

- **Fly-tipping and littering** (illegal dumping of waste, littering, dog fouling and fixed penalty notices)
- **Civil parking** (off-street parking enforcement in Mid Devon District Council's car parks)

- 1.4 This brings together the core work and functions of this authority that improve the safety and health of the residents, visitors and workers in Mid Devon. As a consequence we are often dealing with the most vulnerable persons in need of support and protection. Enforcement actions therefore must be timely, effective and well-managed.
- 1.5 Each area of work uses different legislation to ensure compliance and each has its own extensive body of regulations, codes of practice and guidance. The majority of our duties and powers are set out under criminal legislation, however there are a number of areas covered by civil legislation (i.e. an offence under this legislation is not a criminal offence). Ultimately therefore, we may take action through the criminal and civil courts or engage with other tribunals or formal hearings. The exact nature of procedures used in each circumstance will vary and cannot be set out in full within this policy and will be applied as relevant on a case-by-case basis.
- 1.6 In addition to dealing with the impacts of the activities of private individuals, the Directorate is working with many of our local commercial organisations and traders. Good enforcement policy and approaches should ensure this is done in a way which provides a level playing field in terms of regulation/regulatory burden and supports economic growth in addition to the principles of Better Business for All (BBfA).
- 1.7 BBfA brings together businesses and regulators to consider and change how local regulation is delivered and received. It involves the creation of local partnerships to identify the issues facing local businesses and shape the provision of effective support services to them. It was initially developed by Better Regulation Delivery Office (BRDO) which is now the Regulatory Delivery team at the Dept. for Business Innovation and Skills. More information is available in section 2.15 of the policy or at

- 1.8 With united core aims but such a broad range of individual functions the unit comes under a number of cabinet and corporate priority areas including Environment, Community Well-Being and Homes in addition to Licensing and Regulatory committees.
- 1.9 Overall, the functions undertaken by the Operations Directorate assist the Council in achieving its ambition by contributing towards several priority outcomes including the health and resilience of our residents, growth of the economy and fairness. It strives to accomplish this by undertaking its duties in a fair, consistent and equitable manner by requiring individuals, organisations and businesses to fulfil their legal responsibilities. It will achieve this using a combination of education, informal advice and regulation.

2.0 What is regulatory and enforcement activity?

- 2.1 'Regulatory' encompasses the Council's numerous powers and duties enabling the behaviour of individuals and/or organisations to be controlled in the public interest.
- 2.2 'Enforcement' includes any action carried out in the exercise of, or against the background of, statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the giving of Notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations or conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of Home Office cautions and the making of applications to the Courts for Orders to control the conduct of individuals and/or organisations, possession proceedings, demoted tenancy proceedings and closure orders
- 2.2 These actions cover the full hierarchy of options available, ranging from education and informal advice through to statutory notices and works in default, fixed penalty notices, seizure of goods and formal cautions. Ultimately this also includes prosecution for criminal offences. This may require evidence gathering which involves the seizure of information/documentation, overt and covert monitoring and sampling involving a wide range of media.
- 2.3 Whilst the general principles outlined in the policy will apply in all cases it must be recognised that each individual case will vary and each must be considered on its own merits before a decision is reached. Any significant deviations from the published policy must still meet statutory requirements and the reasons/justification documented.

3.0 Principles of good enforcement and the Regulators' Code

- 3.1 This policy seeks to ensure that the application of any enforcement is undertaken in accordance with key over-arching principles and therefore is:
- transparent and accountable;

- proportionate;
 - targeted;
 - consistent in approach; and
 - appropriate.
- 3.2 Further to these principles, that enforcement has regard to the provisions of the Regulators' Code, in that it:
- supports those we regulate to comply and grow;
 - provides for straightforward way for those we regulate to engage with us;
 - recognises that we base our regulatory activities on risk;
 - that we share information about compliance and risk;
 - information, guidance and advice is made available or signposted to help those we regulate to meet their responsibilities to comply; and
 - sets out our approach to transparent service standards, the provision of information and checks on compliance

More information on how we set out to achieve this is contained in Section 2 of the Policy.

4.0 **Policy review and update**

4.1 The review of this policy was subject to a business case and Project Initiation Document (PID) approved by Group Management Team and Operations Director in September 2018. The review and drafting process was contained in more detail in the PID. Nonetheless, in summary the policy was developed as follows:

- initial update and practice review by the Group Manager for Public Health and Regulatory Services including key learning points from recent evidence, procedure/best practice and case review training (Advanced Certificate of Professional Investigative Practice – APCIP)
- a multi-stage process of review and edit with all the relevant service team leads including Housing and Street Scene
- incorporation of key learning points from the recent RIPA training completed by senior managers and Leadership Team
- final draft line by line legal review by Legal Services.
- review by Director of Operations

5.0 **What is new in this policy?**

5.1 Overall, the policy recognises and formalises changes in enforcement practice in the two-years plus since the previous policy was drafted and adopted, in line with the regulatory framework outlined above. In doing so it provides a comprehensive overview of the following areas:

- compliance with the principles of good enforcement
- links and relationship with Better Business for All
- updated enforcement options and hierarchy including cautions

- revised Evidential and Public Interest Tests
- Proceeds of Crime
- use of powers of entry
- surveillance in light of changes to RIPA (Regulation of Investigatory Powers Act 2000) powers
- updated guidance on the use of Covert Human Intelligence Sources
- use of open source research (e.g. web, social media and information networks)
- charging for enforcement actions including recent case law
- policy implementation, monitoring and review
- civil sanctions and enforcement in a social housing context (Council housing tenants and Housing Services)
- littering and fly-tipping powers (Street Scene Services)
- new Private Sector Housing powers in respect of rogue landlords and Houses in Multiple Occupation
- new Financial (Civil) Penalties
- merit and legal tests for prosecution or alternatives to prosecution
- publicity and information requests connected to enforcement actions

5.2 The policy also reflects updated management structures and responsibilities including relevant Group Managers.

5.3 Sections 1 – 8 inclusive of the document form the key adopted policy. These contain all the common or generic over-arching policy approaches as will be relevant across most or all the statutory functions across the Operations Directorate.

5.4 The policy also contains separate appendices A-M which are supplementary enforcement policies containing more detailed and largely function specific information. These are designed to be updated and revised more easily without requiring formal re-adoption of the overarching policy. Nonetheless, the full policy will be reviewed every two-years and as required in light of any major changes to legislation or statutory guidance.

5.5 The main policy and appendices do not work in isolation. As set out, the document links to a number of other policies and guidelines that apply. This includes how the policy works in conjunction with other relevant government guidance from authoritative bodies e.g. Health & Safety Executive, Environment Agency and Food Standards Agency. It also links to corporate policies covering areas such as conflict of interest and bribery. Finally, the policy contains essential links with function specific policies, for example those adopted as the Licensing Authority.

6.0 Summary

6.1 The policy is needed to ensure we are continuing to meet our legal requirements and carrying out our enforcement activities in a fair, transparent, equitable and effective manner.

6.2 This policy brings together the enforcement policy for the wide range of enforcement functions within the Operations Directorate. In doing so, it sets out the enforcement approach and framework for all the enforcement activities

of the Council with the exception of Planning enforcement and debt recovery.

- 6.3 All enforcement procedure and practice must therefore be developed, reviewed and ultimately take into account matters set out in this policy in addition to relevant function or activity specific legislation and statutory guidance.

Contact for more Information:

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Circulation of the Report:

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Group Manager for Street Scene and Open Spaces
Group Manager for Housing Services
Group Manager for Legal Services and Monitoring Officer
Group Manager for Performance and Governance
Members of Licensing and Regulatory Committees
Members of Community, Homes and Environment Policy Development Groups

List of background papers:

Regulators' Code 2014 (Department of Business Innovation and Skills),

Code of Practice Powers of Entry 2014 (Home Office)

Legislative and Regulatory Reform Act 2006

Regulatory and Enforcement Sanctions Act 2008.

All documents are available at <https://www.gov.uk/>.

Annex 1 – Operations Directorate Enforcement Policy (attached separately)