

LICENSING COMMITTEE
15TH OCTOBER 2020

ENFORCEMENT POLICY

Cabinet Members: Cllrs Dennis Knowles (Community Well-being/Licensing and Regulatory), Colin Slade (Environment) and Bob Evans (Housing)

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

Reason for Report and Recommendation: To provide Members with the Enforcement Policy PH/EP/09/20. This is policy was formerly the Public Health Services Enforcement Policy PH/EP/02/16 adopted in August 2016, as updated to encompass the (then) wider Operations Directorate functions in February 2019 under reference PH/EP/01/19. The policy was due for review in 2021 and for reasons set out in Section 1 of this report the review has been brought forward. These latest proposed updates to the Policy continue to cover the same broad enforcement functions.

The reason for the recommendation is to ensure the Council has an appropriate enforcement policy in place for the relevant statutory functions of the services within the scope of the policy. Without this, we may not meet the relevant legal requirements that are our duty as a regulatory authority.

RECOMMENDATION(S): That the updated Enforcement Policy attached to Annex 1 is adopted

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

Financial Implications: There are no direct financial implications arising from adopting this updated policy other than to specify circumstances where the relevant services are legally able to levy fixed penalty notices, charge for application processes and for relevant enforcement actions, thereby deriving some cost-recovery.

Poorly managed enforcement and/or a failure of legal proceedings can result in resources being used wasted and costs being awarded against the Council.

Budget and Policy Framework

This is a policy to ensure the relevant Council services and functions are in compliance with Regulators' Code and the principles of good enforcement. There are no direct budget requirements arising from the policy however the broader financial implications are as set out above and within the body of the policy itself.

Legal Implications: If we do not have an appropriate enforcement policy in place for the statutory functions of the relevant enforcement services we may not meet the 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 will be carried out 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.

Impact on Climate Change: None identified

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 managers, Corporate Management and Leadership Teams, Cabinet, Legal Services and any person, organisation, company or business affected by regulatory action from those services covered by the policy; Public Health and Regulatory Services, Housing Services and Street Scene Services.
- 1.3 These services are 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 standards/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

- **Civil parking** (off-street parking enforcement in Mid Devon District Council's car parks)

- **Enviro-crime** (fly-tipping, , fixed penalty notices and littering, including from vehicles)
- **Dog fouling and stray dogs** (including microchipping)
- **Abandoned vehicles**
- **Compulsory recycling**

- 1.4 This brings together the core work and functions of this authority that positively impact upon the safety and health of the residents, visitors and workers in Mid Devon. In doing so, 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). We therefore ultimately 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, these services are 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 yet 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 <https://www.gov.uk/government/publications/business-regulation-better-business-for-all>
- 1.8 With common aims across a broad range of individual functions these services nonetheless come under a number of cabinet portfolios and impact upon all corporate priority areas (Homes, Environment, Community and Economy).

- 1.9 Overall, the functions undertaken by these services 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 sustainable communities. 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.
- 1.10 A review of the policy was scheduled for 2021. For reasons set out below, earlier this year it was identified that the policy required updating earlier. However, the work of the lead officer and relevant services in response the Covid-19 pandemic put this work on hold and has now been completed at the earliest opportunity.

Policy review triggers:

- Newly adopted local enforcement policies covering the Street Scene service (Cabinet April 2020)
- Additional regulations in enforced by Public Health and Regulatory Services: private sector housing functions covering new alarms, energy efficiency provisions and electrical safety
- Updated enforcement tools and service request triage procedures in Public Health and Regulatory Services
- Departure (and non-replacement of) the Director of Operations meant the structure of service management changed and the Operations Directorate ceased to exist - this Directorate is named in the title and throughout the current policy

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 closure orders

- 2.3 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.
- 2.4 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 contained in Section 2 of the Policy.

4.0 Policy review and update process

- 4.1 The review of this policy has been carried out by the Group Manager for Public Health and Regulatory Services in conjunction with all service leads and key managers across the Public Health, Housing and Street Scene service.
- 4.2 Once the above review was complete, a working draft (all changes tracked) was subject to the normal internal Cabinet Lead, Group Manager and Leadership consultation. Importantly, Legal services were provided with an early opportunity to review all changes to ensure the policy remained fit-for-purpose from a key legal perspective given the overall purpose and requirement of the policy.

5.0 What is new in this policy?

- 5.1 In recognising those policy review triggers identified in 1.10, a wider review of the policy was also undertaken to ensure it remains fit-for-purpose. In doing the overarching regulatory framework and guidance, as outlined above, were checked for updates, revisions or replacement.
- 5.2 Since the original review triggers were identified earlier this year, there has of course been some changes to our regulatory framework and approach due to the on-going Covid-19 pandemic. With a light-touch and to reflect the fluid nature of this situation, these changes have also been incorporated into the policy where possible.
- 5.3 Overall, given the relatively short time since the previous (major) update to the policy the main body of the policy itself remains current and relevant with no additional significant changes identified. Consequently, aside from minor formatting tweaks, the changes presented in this version of the policy are:
- Updated appendices relevant to Street Scene services to reflect the purpose and content of the following newly adopted policies; **Fly-tipping**, **Littering from Vehicles**, **Stray Dogs** (including micro-chipping), **Abandoned Vehicles** and **Compulsory Recycling** – all adopted under a general Environment Education Policy heading at Cabinet in April 2020. *Appendices L – P inclusive*
 - **Housing standards (Private Sector Housing)** - The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 – both of which have now come into effect and The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 which (in part) applies and in full from 1 April 2021. *Appendix J*
 - **Statutory Nuisance and Anti-social behaviour** – new ‘Noise’ and ‘Reportable’ Apps tools and changes to management procedures for reactive complaints/service requests. *Appendix C*

- **Covid-19** - Setting out the relationship between existing H&S legislation and pandemic/Covid (or other pandemic) enforcement and recognising the new (temporary) Pavement Licensing regime. *Appendices I and B respectively*

- 5.4 The policy also reflects updated management structures and responsibilities including removal of reference to an 'Operations Directorate'.
- 5.5 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 different services.
- 5.6 As before, the policy also contains a number of separate appendices A - P which are supplementary enforcement policies containing more detailed and largely function specific information. These are designed to be updated and revised more easily without significant revision to the overarching policy, unless there are also relevant changes to the legal framework covering broader enforcement practice and regulatory code of practice etc. It is therefore proposed in the policy to extend the formal policy review interval to 10 years (in line with other recently approved policies) and at all other time as required in light of any key changes to legislation or statutory guidance.
- 5.7 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 or as a provider of Social Housing.
- 5.8 All proposed changes to the policy document are tracked on the version attached to Annex 1 of this report.

6.0 Summary

- 6.1 The policy is required 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 across the Council. 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:

Simon Newcombe, Group Manager for Public Health and Regulatory Services,
Corporate Management Team snewcombe@middevon.gov.uk

Circulation of the Report:

Cabinet Members for Community Well-being, Environment and Housing and Property
Leadership Team
Head of Legal Services (Monitoring Officer)
Corporate Management Team and relevant Group Managers
Members of Licensing and Regulatory Committees
Members of Community, Environment and Homes 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 – Enforcement Policy (attached separately)