

REPORT OF THE HEAD OF HUMAN RESOURCES AND DEVELOPMENT

PUBLIC HEALTH SERVICES ENFORCEMENT POLICY

Responsible Officer: Simon Newcombe, Public Health and Professional Services Manager

REASON FOR REPORT

1. That members adopt the new Public Health Services Enforcement Policy which encompasses the Licensing regulatory functions carried out by the Council

RECOMMENDATION:

That Members note the contents of the new Public Health Services Enforcement Policy (Appendix A).

RELATIONSHIP TO CORPORATE PLAN

1. As a regulatory authority, enforcement activities are matters which overarch the Corporate Plan.

FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS

Any financial, legal and/or risk assessment implications are set out below:

Financial	There are no direct financial implications arising from adopting this policy. However, poorly managed enforcement and failure of legal proceedings can result in resources being wasted and costs being awarded against the Council.
Legal	If we do not have an appropriate enforcement policy in place for the statutory functions of the service 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), 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. This policy has also been assessed in accordance with the requirements of the Equality Act 2010. That assessment 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 our enforcement activities are carried out in a fair, consistent and equitable manner.
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 and to meet the wider licensing objectives.

1.0 Introduction

1.1 The Public Health Services Unit is responsible for several different broad enforcement functions across a number of teams including:

- **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, infectious diseases, environmental permitting, air quality, contaminated land, noise and other statutory nuisances, pest control, filthy premises and drainage)
- **Private Sector Housing** (private sector housing conditions/fitness and renewal, empty homes and houses in multiple occupation)

1.2 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.

1.3 In addition to dealing with the impacts of the activities of private individuals, the unit 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 yet and supports economic growth in addition to the principles of Better Business for All (BBfA).

- 1.4 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>
- 1.5 Each area of work uses different legislation to ensure compliance and each has its own extensive body of regulations, codes of practice and guidance. This diverse range of reactive and proactive work, functions and licensable activities adopts reactive, targeted and risk based approaches to ensure enforcement is carried in a manner that is as effective and fair manner as possible.
- 1.6 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 Community Well-Being and Decent and Affordable Homes in addition to the Licensing and Regulatory committees.
- 1.7 A separate report on this enforcement policy has been considered at a joint meeting of the Community Well-Being and Decent and Affordable Homes PDGs on the 8 July 2016 given that the policy applies to the full range of enforcement functions outlined in section 1.1 above. A verbal update on this joint PDG will be provided at the committee meeting.

2.0 What is enforcement and regulatory activity?

- 2.1 'Enforcement' and 'regulatory activity' includes any action and the whole range of regulatory options and interventions available to us as taken by officers aimed at ensuring that individuals, organisations or businesses comply with the law as set out under the range of licensing legislation.
- 2.2 These actions cover the full hierarchy of options available to the Licensing team, ranging from education and informal advice through to formal cautions. Ultimately this also includes prosecution for criminal offences in addition to bringing enforcement matters forward at hearings of the Licensing or Regulatory sub-committees as required. To do so requires the gathering of evidence which may involve the seizure of information/documentation, obtaining witness statements, conducting formal interviews under caution, and overt or covert monitoring including test purchases.
- 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 a 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 What is new in this policy?

4.1 Overall, the policy recognises and formalises changes in enforcement practice in recent years in line with the regulatory framework outlined above. In doing so it provides a much more comprehensive overview of the following areas:

- compliance with the principles of good enforcement
- links and relationship with Better Business for All
- enforcement options and hierarchy including cautions
- Evidence and Public Interest Tests
- Proceeds of Crime
- use of powers of entry
- surveillance in light of regulatory changes to RIPA powers
- charging for enforcement actions
- policy implementation, monitoring and review
- publicity and information requests connected to enforcement actions

4.2 Sections 1 – 8 inclusive of the report 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 of the Public Health Services Unit.

4.3 The policy also contains separate Appendices 1-7 which are supplementary enforcement policies containing more detailed and 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 three-years and as required in light of any major changes to legislation or statutory guidance.

- 4.4 Appendix 1 of the policy specifically covers the work of the Licensing team and will be of direct interest to the committee.
- 4.5 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. It also links to corporate policies covering areas such as conflict of interest and bribery. Finally, the policy contains essential links with Licensing specific policies, for example those made under the Licensing Act, Gambling Act or as relevant to Hackney Carriage & Private Hire licensing etc.

5.0 Summary

- 5.1 This policy brings together the enforcement policy for the wide range of enforcement functions within the Public Health Services Unit including the Licensing team.
- 5.2 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.

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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/.
Circulation of the Report	Licensing Committee