

Environmental Excellence Policy Development Panel
23rd June 2022

Regulatory Enforcement Policy

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Portfolio: Environmental Excellence

Ward(s) Affected: All Wards

Purpose of the Report:

This report presents a proposed overarching Enforcement Policy for adoption to replace the council's existing enforcement policy.

Recommendations:

1. Council to agree the adoption of the proposed over-arching Enforcement Policy at Appendix 2 to replace the existing overarching enforcement policy, retaining as separate documents its other existing thematic enforcement policies.

1. Summary

1.1 This report and the proposed new overarching enforcement policy at Appendix 2 set out arrangements applicable to a range of the council's regulatory and enforcement services listed below in paragraph 2.1. The proposed policy will not apply to fraud investigations.

1.2 The council's robust approach to regulation and enforcement in the service areas covered by this report involves:

- a) Maximising the offer of appropriate advice and support to legal duty holders,
- b) Making rapid responses and early interventions to nip in the bud community concerns and incidents of non-compliance, and
- c) An abbreviated prosecution approach that expedites enforcement and minimises costs to council tax payers.

1.3 The council as a regulator exercising enforcement powers is subject to specific expectations and its overarching enforcement policy now requires updating. The council's existing overarching enforcement policy in at Appendix 1. The revised and updated overarching enforcement policy presented in Appendix 2 is proposed for adoption.

1.4 If adopted, the proposed new overarching enforcement policy will:

- a) Effectively update the broad enforcement policy framework.
- b) Set out the council's broad policy statements for investigation and robust enforcement.
- c) Support rapid and efficient enforcement.

The proposed enforcement policy will apply both to breaches of established legal duties and to offences identified through incidents arising, reports received, officer inspections and investigations. The key test of enforcement questions will be that there is sufficient evidence and public interest, and that it is necessary and proportionate, to carry out enforcement.

1.5 Adopting the proposed enforcement policy will provide the necessary foundations, and will help to ensure that there is no need for repetition in detailed thematic enforcement policies to follow for consideration and adoption. Those thematic enforcement policies will contain detailed considerations in individual areas regulation, including decision-making thresholds and criteria for specific powers and areas of legislation being too numerous to include in one policy document.

1.6 The proposed enforcement policy approach, designed to correspond with that of South Norfolk Council as a collaborating partner, would see a common set of enforcement policy provisions being adopted by both councils. This would give the clarity and certainty to common officer teams in how they approach and administer regulation and enforcement. This is recommended by officers because, from a regulatory and enforcement services perspective, both districts share similar characteristics, profiles of regulatory non-compliance and offending, and enforcement requirements. No significant enforcement policy distinctions or

special requirements have been identified that would affect the adoption of the proposed overarching enforcement policy.

2. Background

- 1.7 The council is responsible for administering a wide range of legislation, advising and regulating to ensure compliance, and where necessary taking enforcement action. The enforcement services subject to the proposed enforcement policy at Appendix 2 are Regulatory services for environmental protection (including environmental quality, community protection and community safety & intervention), food and safety, and licensing, together with Housing Standards services including enforcement for gypsy and traveller unauthorised encampments.
- 1.8 An enforcement policy serves two purposes:
- a) To establish a documented policy framework informing enforcement approaches, decision-making and practices of investigating officers and other decision-makers.
 - b) To provide information about the council's policy approach to those people and businesses which are regulated and those protected by regulation, so that they can know what to expect and can assure themselves when facing potential enforcement.
- 2.3 Following the Enforcement Concordat in 1998 and the Hampton Report in 2005, the Regulators' Code was published in July 2013, and this replaced the Regulators' Compliance Code. The Regulators' Code is a statutory code of practice introduced under section 23 of the Legislative and Regulatory Reform Act 2006 which came into force on 6 April 2014. Each regulator covered by the Regulators' Code is expected to adopt an enforcement policy that incorporates its requirements.
- 2.4 While there is no explicit legal requirement to document enforcement policies, without doing so it would be more difficult for the council to demonstrate compliance with the Regulators' Code and preceding external expectations. Many regulatory bodies, including this council and other local authorities, have adopted and published an enforcement policy based upon the principles of good regulation and the predecessors of the Regulators' Code.
- 2.5 The council last updated its overarching enforcement policy in November 2015 and a copy of the main document is attached at Appendix 1. The overarching enforcement policy now requires review. The revised policy at Appendix 2 proposes updates and revisions to the policy, including specific new considerations dealing with issues linked to equality, to vulnerable people and to minors.

3. Current position/findings

- 1.9 Enforcement policies can range from single high-level generic cross-service documents to highly detailed sets of policies. Detailed policies can extend to setting the preferential order of enforcement options in a single thematic area and

the criteria for decision-making (minimum culpable age, etc.). The council's existing enforcement policy document at Appendix 1 provides an overarching policy together with thematic policies set out in appendices. The appendices to the existing enforcement policy have not been included in Appendix 1 because they will be the subject of updated versions coming forward as separate proposed new policies.

- 1.10 There are advantages in separating the overarching enforcement policy and thematic enforcement policies into separate documents:
- a) It is simpler to administer and update each policy without adverse impact on the others.
 - b) It encourages a helpful focus on the key considerations applicable to a particular area when enforcement policy question arises.
 - c) During challenges and legal proceedings, technicalities can focus on policy wording and it is helpful to keep policy documents tightly focussed.
- 1.11 Local government delivers a range of regulatory functions across diverse services, utilising a range of legislation and legal powers. Some regulatory functions/services may rely mainly on a single act of parliament or set of regulations. Others may make use of a range of legal powers from different legislation to achieve the desired outcomes. Changes in legislation and government policy are increasingly frequent, and national policy approaches have become more diverse between the various themes of regulation and enforcement falling to local authorities. Forseeably, the need for making revisions to the council's enforcement policies will become more frequent.
- 1.12 All our regulatory services' enforcement approaches and decision-making should comply with the Regulators' Code of practice. If this council and South Norfolk Council were to maintain differing enforcement policies, with differing requirements, there would be a significant risk that our common services officer teams operating to different sets of policies and corresponding procedures could make mistakes, with risks to enforcement case outcomes. The council's overarching enforcement policy needs to be brought up to date in key areas noted in paragraph 4.2.
- 1.13 The approach proposed will enable services to respond quickly and accountably to emerging threats, whilst reducing duplication and any risk of requiring policy revisions each time new legislation is enacted.

4. Proposed action

- 1.14 The proposed new overarching Regulatory Enforcement Policy at Appendix 2 has been updated and revised to satisfy the Regulators' Code and reflect good enforcement practice.
- 1.15 Whilst this proposed new enforcement policy adopts a fresh format, many of the considerations are consistent with the previous enforcement policy. The key changes concern:

- a) Changes in legislation and regulators' compliance expectations (throughout the document).
- b) The council's vision.
- c) Explicit consideration of equality issues (draft Policy paragraphs 18 and 85),
- d) Provisions governing action against vulnerable people (draft Policy paragraphs 106 and 107).
- e) Provisions governing action against minors (draft Policy paragraphs 66, 108 and 109).
- f) Measures to deter reoffending and improve offenders' standards of behaviour (several places in the draft policy).

5. Other options

- 1.16 **Option 1 – Do Nothing.** The council is the legally obliged to update its existing enforcement policy, however doing nothing would fail to reflect opportunities identified in this report and changes in national expectations on regulators.
- 1.17 **Option 2 – Pursue a different policy.** The council decide to update its policy but to take a different line on enforcement principles, approaches and detailed considerations than those proposed in Appendix 2.

6. Issues and risks

- 1.18 **Resource Implications** – No new budget implications have been identified. The existing policy position of robust enforcement involves greater numbers of enforcement cases, vigorously pursued, with attendant implications for officer time and legal costs. In other respects, the proposed overarching enforcement policy contains no changes raising significant new resource implications.
- 1.19 **Legal Implications** – The updating of the council's overarching enforcement policy is supportive of robust and enforcement. Legal advice has been taken on the draft policy and no new implications have been identified arising from the proposed enforcement policy.
- 1.20 **Equality Implications** – The proposed enforcement policy includes equality assessments and specific considerations concerning enforcement and young or vulnerable people. There are no identified impacts on any specific individuals or groups having protected characteristics.
- 1.21 **Environmental Impact** – Positive enforcement is protective of the environment. No adverse implications have been identified.
- 1.22 **Crime and Disorder-** Positive enforcement is protective of our communities from crime and disorder. No adverse implications have been identified.
- 1.23 **Risks** – Adopting the overarching enforcement policy as proposed raises no identified risks beyond the matters covered in this report.

7. Conclusion

- 1.24 The overarching Enforcement Policy as proposed meets the expectations of the Regulators' Code and recognised good practice. Adopting the policy will establish update the council's provisions, supporting good regulation and positive enforcement.

8. Recommendations

- 8.1 Council to agree the adoption of the proposed overarching Enforcement Policy at Appendix 2 to replace the existing overarching enforcement policy, retaining as separate documents its other existing thematic enforcement policies.

Background papers

1. Broadland District Council's enforcement policy (November 2015).
2. UK Government, former Better Regulation Delivery Office (now BEIS) – [Regulators' Code](#).