

North Tyneside Council

Report to Cabinet

9 November 2015

ITEM 7(e)
**Review of the
Council's Statement
of Enforcement Policy**

Portfolio(s): Housing and Transport

Cabinet Member(s): Cllr J Harrison

Report from Service Area: Environment, Housing and Leisure

Responsible Officer: Phil Scott (Tel: 6437295)
Head of Environment, Housing and Leisure

Wards affected: All

PART 1

1.1 Executive Summary:

On 6 April 2014 the Regulators' Code came into effect. Regulators have a statutory duty to have regard to the Code. The Code requires that Enforcement Policies are updated to reflect the new requirements of the Code and with this in mind the Authority is to consult on a revised Statement of Enforcement Policy.

The current North Tyneside Council Statement of Enforcement Policy was consulted upon publically and approved by Cabinet in 2009. There is a commitment within the Policy to review it every 3 years. An internal review was completed in 2012 and it was considered to be still fit for purpose with no changes required. This Report outlines the initial proposals to Cabinet in connection with the formulation and subsequent formal approval of the Policy.

1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) endorse the draft revised Statement of Enforcement Policy attached at Appendix 1 to this Report;
- (2) approve the commencement of a 12 week consultation exercise on the draft revised Statement of Enforcement Policy; and
- (3) receive a further report at the conclusion of the consultation exercise detailing the responses received and enclosing a final draft of the Statement of Enforcement Policy for approval taking into account, where appropriate, the consultation responses.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 5 October 2015.

1.4 Council Plan and Policy Framework

This report relates to the following priority in the 2014/18 Our North Tyneside Plan.

Our People:

Our People will be cared for and kept safe if they become vulnerable.

Working with partners to identify the most vulnerable and protect them from becoming victims of crime. The Enforcement Policy sets out the key principles under which officers will seek to achieve compliance with legislation. The amended policy will give guidance on how the Authority is to utilise its range of enforcement powers against those that contravene legislation designed to protect the safety of vulnerable persons.

1.5 Information

1.5.1 Background

The North Tyneside Council Statement of Enforcement Policy underpins all investigations undertaken by the Authority under statutory regulatory services or non-statutory enforcement functions and prosecution proceedings throughout the Authority.

This 'umbrella' policy is a far-reaching document with implications upon large areas of the Authority's work. It has been prepared having regard to Section 21 of the Legislative and Regulatory Reform Act 2006.

Under certain legislation it is a statutory requirement that Local Authorities have in place a corporate enforcement policy. Additionally there may also be a requirement to have a service specific policy e.g. under the Licensing Act 2003. Failure to have regard to or to comply consistently with an adopted enforcement policy can be fatal to the success of any proceedings, as highlighted by case law.

The Policy reflects the shift in focus of regulatory enforcement actions to a more targeted, risk based and proportionate approach.

1.5.2 Regulators' Code

The Regulators' Code came into effect on 6 April 2014, replacing the Regulators' Compliance Code. Local Authorities are required, by section 24(2) of the Legislative and Regulatory Reform Act 2006, to have regard to this Code. The Code was issued on 6 April 2014 by the Better Regulation Delivery Office (BRDO). It provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. The new Code aims to clarify what is required of regulators and to provide a framework for how regulators should interact with those they are regulating. The Regulators' Code requires that regulators should ensure that their approach to their regulatory activities is transparent, accountable, proportionate and consistent.

Although the Regulators' Code does not require Planning or Building Control Enforcement Services to adopt the principles set out in the Code, it makes sense to apply a common approach across all the Service areas, particularly with respect to achieving business compliance and therefore Planning and Building Control will have regard to the Code. This will enable the Authority to demonstrate that the enforcement activities of Regulatory Services as a whole are open, helpful, proportionate, consistent, targeted, transparent and accountable.

The six principles underlying the Regulators' Code are:

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
3. Regulators should base their regulatory activities on risk.
4. Regulators should share information about compliance and risk.
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
6. Regulators should ensure that their approach to their regulatory activities is transparent.

Local authorities need to have regard to the Code when developing the policies and principles that guide their regulatory activities. With this in mind the principles of the Regulators' Code have been included within the Enforcement Policy.

1.5.3 Review of Policy

Paragraph 12.4 of the current policy provides as follows:

'This Statement of Enforcement Policy will be reviewed internally every three years with additional reviews if required to reflect any changes in legislation and guidance'.

In accordance with this paragraph Officers carried out an internal review of the Policy in March 2011. The outcome of the review was that the policy remained fit for purpose and minimal change was required. A formal review of the policy is now required, which will involve a 12 week consultation exercise.

An initial desktop review and consultation with service area managers has taken place. Some changes in legislation have been identified and there are a small number of minor amendments to the Policy, however the main amendment has been the inclusion of the need to have regard to the Regulators' Code.

An up to date policy will provide a consistent, fair and equitable regime of enforcement for residents, employees, voluntary organisations and businesses in North Tyneside. It should underpin all investigations and actions taken by the Authority under statutory regulatory services or non-statutory enforcement functions. This should ensure all investigations and proceedings are approached in a consistent manner, are proportionate to the risk identified and robust enough to withstand challenge in any legal proceedings.

The draft revised Policy statement will be subject to a 12 week period of borough wide public consultation to include residents and local businesses that will begin on 7 December 2015 and end on 29 February 2015. The 12 week period of consultation is considered an appropriate period of time to consult on this important Policy document. A list of the consultees will appear in the Policy document.

At the conclusion of the consultation exercise the policy will be amended to take account of any relevant consultation responses before being brought back to Cabinet to be formally adopted on behalf of the Authority.

1.6 Decision options:

The following decision options are available for consideration by Cabinet

Option 1

Endorse the draft revised Statement of Enforcement Policy attached at **Appendix 1** to this Report, such endorsement being subject to any further amendments following the conclusion of the current consultation process; and approve the commencement of a 12 week borough wide consultation exercise on the draft Statement of Enforcement Policy.

Option 2

Not to endorse the draft revised Statement of Enforcement Policy attached at **Appendix 1** to this Report.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

To ensure that the Authority's Statement of Enforcement Policy reflects recent legislative changes and incorporates the need to have regard to the Regulators' Code the draft Statement of Policy needs to be amended following a consultation exercise. If the Policy is not amended as suggested then it may be liable to successful challenge. The revised Policy will promote a consistent approach to enforcement and ensure that all Service Areas involved in enforcement are complying with its principles.

1.8 Appendices:

Appendix 1: Draft revised Statement of Enforcement Policy

1.9 Contact officers:

Phil Scott – Head of Environment, Housing and Leisure (Tel: 6437295)
Colin MacDonald – Senior Manager, Technical and Regulatory Services (Tel: 6436620)
Alan Burnett – Trading Standards and Licensing Officer (Tel: 643 6621)
Joanne Lee – Public Protection Manager (Tel: 6436901)
John Barton – Lawyer (Tel: 6435354)
Catherine Lyons, Regulatory Services Manager, Tel: (0191) 643 7780
Alison Campbell, Senior Business Partner, Tel (0191) 643 7038

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- (1) North Tyneside Council Statement of Enforcement Policy 2009: [Enforcement Policy](#)
- (2) Legislative and Regulatory Reform Act 2006 [Section 21 of the Legislative and Regulatory Reform Act 2006](#)
- (3) Legislative and Regulatory Reform (Regulatory Functions) Order 2007: <http://www.legislation.gov.uk/uksi/2007/3544/body/made>
- (4) Regulators' Code: [Regulators Code](#)

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The costs of preparing the revised Statement of Enforcement Policy and the associated consultation arrangements can be met from the Service Area's revenue budget.

2.2 Legal

The Legislative and Regulatory Reform Act 2006 states that specified Regulators must have regard to the Regulators' Code when developing policies and operational procedures that guide their regulatory activities or when setting standards or giving guidance to those that they regulate. The Legislative and Regulatory Reform (Regulatory Functions) Order 2007 makes local authorities one of the specified Regulators that must have regard to the Code.

Clearly the Authority's Enforcement Policy is captured by the duty in the 2006 Act to have regard to the Regulators' Code when formulating the Policy.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

Internal consultation will be undertaken with Elected Mayor, Cabinet Members, Ward Members, Senior Management Team and with the Officers involved in the delivery of enforcement functions undertaken by the Authority and service areas impacted by the policy.

2.3.2 External Consultation/Engagement

The policy will be subject to a 12 week consultation period. Notice of this consultation will be given through a press release and copies of the draft Policy statement will be made available at the Authority's offices, customer service centres, libraries and on the North Tyneside Council website. Copies of the draft Policy document will also be forwarded to local Members of Parliament, MEPs, all Members of the Authority and partner organisations and stakeholders.

2.4 Human rights

Investigations and enforcement decisions are taken within the scope of subject-specific legislation and due regard is taken of the Regulation of Investigatory Powers Act 2000 and the Human Rights Act 1998.

2.5 Equalities and diversity

The Policy recognises the diverse range of businesses, traders, residents and other members of the general public within North Tyneside. The Authority recognises the potential impact that this policy may have on people with particular protected characteristics. Reasonable adjustments will be made to persons with additional communication needs. All persons, groups, organisations and 'customers' coming into contact with an enforcement 'service' provided by the Authority, will be given an equal opportunity to engage with the enforcement process and no decision taken by an enforcement function of the Authority should in any way discriminate against any person or group in society. An Equality Impact Assessment will be carried out to inform the planning of the consultation process

2.6 Risk management

Risks associated with the service are managed via the Operational Risk Management Group.

2.7 Crime and disorder

The policy sets out the approach of Regulatory Services towards the enforcement of relevant legislation supporting the prevention of crime and disorder, control of anti-social behaviour, and the protection of public health and safety. Enforcement activity will be taken in accordance with specific legislation and in accordance with the Regulation of Investigatory Powers Act 2000 and Police and Criminal Evidence Act 1984.

2.8 Environment and sustainability

The amended policy is aimed at improving the environment of North Tyneside for residents, businesses and visitors by ensuring policies and procedures are in place which seek to protect and enhance the environment and enable the Authority to utilise its range of enforcement powers against those who contravene environmental legislation.

PART 3 - SIGN OFF

- Deputy Chief Executive
- Head(s) of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Head of Corporate Strategy