

North Tyneside Council

Report to Cabinet

Date: 9 May 2016

ITEM 6(b)

Title: 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: 643 7295)
Head of Environment, Housing and Leisure

Wards affected: All

PART 1

1.1 Executive Summary:

The North Tyneside Council Statement of Enforcement Policy underpins all investigations undertaken by the Authority under statutory or non-statutory regulatory services enforcement functions. It guides the Authority on arriving at appropriate/proportionate enforcement outcomes. The policy was publically consulted upon and approved by Cabinet in 2009 and in 2012.

Following the publication of the Regulators Code which came into effect in 2014 a comprehensive review of the policy was undertaken to ensure it remains fit for purpose.

This report outlines the final proposals to Cabinet in relation to the draft policy.

1.2 Recommendation(s):

It is recommended that Cabinet approve the draft revised Statement of Enforcement Policy attached at **Appendix 1** to this Report.

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 7 March 2016.

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.

1.5 Information

1.5.1 Background

The 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 statutory 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; this document 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.

The following local authority services in scope under The Regulators' Code are:

- Environmental Health
- Fire safety
- Trading Standards

- Licensing.

Planning or Building Control Enforcement Services are not within the scope of the Regulators Code and as such are not required to adopt the same principles, however a common approach has been applied across all of these Service areas, particularly with respect to achieving business compliance. 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 that regulators should:

1. Carry out their activities in a way that supports those they regulate to comply and grow.
2. Provide simple and straightforward ways to engage with those they regulate and hear their views.
3. Base their regulatory activities on risk.
4. Share information about compliance and risk.
5. Ensure clear information, guidance and advice are available to help those they regulate meet their responsibilities to comply.
6. 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'.

An up to date policy provides a consistent, fair and equitable regime of enforcement for residents, employees, voluntary organisations and businesses in North Tyneside. It underpins 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.

1.5.4 Consultation

An initial desktop review and consultation with service area managers took place which identified changes in legislation and a small number of minor amendments to the policy. The main amendment has been the need to have regard to the Regulators' Code.

Even though there were not considered to be fundamental changes to the policy, the draft revised policy statement was subject to a 12 week period of borough wide public consultation that began on the 7 December 2015 and ended on 29 February 2016. The 12 week period of consultation is considered an appropriate period of time to consult on this important policy document. Notice of this consultation was given through a press release and copies of the draft policy statement were made available at the Authority's offices, customer service centres, libraries and on the North Tyneside Council website. Copies of the draft policy document were also forwarded to local Members of Parliament, MEPs, all Members of the Authority and partner organisations and stakeholders. A list of the consultees is attached at Appendix 2.

In total 6 responses were received to this consultation exercise. All of the responses were from members of the public. Each response was considered by officers however did not result in an amendment to the draft policy.

A summary of the responses received is attached at Appendix 3.

A final internal consultation with service area managers resulted in one minor amendment.

1.6 Decision options:

The following decision options are available for consideration by Cabinet

Option 1

Approve the draft revised Statement of Enforcement policy attached at **Appendix 1** to this Report.

Option 2

Not to approve the draft revised Statement of Enforcement Policy attached at **Appendix 1** to this Report, and request Officers undertake further review of the policy.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

The revised policy will promote a consistent approach to enforcement and ensure that all departments involved in enforcement are complying with its principles. The policy reflects recent legislative changes and incorporates the need to have regard to the Regulators' Code. If the policy is not amended as suggested then it does not reflect recent legislative changes.

1.8 Appendices:

Appendix 1: Draft revised Statement of Enforcement Policy

Appendix 2: Consultees List

Appendix 3: Summary of consultee responses

1.9 Contact officers:

Phil Scott – Head of Environment and Leisure (Tel: 643 7295)

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: 643 6901)

Catherine Lyons, Regulatory Services Manager, (Tel: 643 7780)

Alison Campbell, Senior Business Partner, (Tel: 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 [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 have been met from the Service Area's revenue budget. There are no changes to the policy that will result in financial implications arising for the Authority.

2.2 Legal

A Local Authority as a regulatory authority, must have regard to any code of practice issued by a Minister of the Crown under section 23 of the Regulatory Reform Act 2006 when determining a policy or set of principles in relation to the exercise of regulatory functions including enforcement. The current Regulators Code was published in April 2014 with Parliamentary approval. The Enforcement Policy has been drafted with due regard having been had to the Regulators Code. And the principles of enforcement set out in that Code.

The approval of the Enforcement Policy is a Cabinet responsibility.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

Internal consultation has been 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 draft policy has been widely consulted upon. The policy was subject to a 12 week consultation period. Notice of this consultation was given through a press release and copies of the draft policy statement were made available at the Authority's offices, customer service centres, libraries and on the North Tyneside Council website. Copies of the draft policy document were also 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. We recognise the potential impact that this policy may have on minority groups and the more disadvantaged and vulnerable of residents within the borough and this is reflected in the policy itself. The policy will be implemented in line with the aims of the 2010 Equality Act, particularly those to eliminate unlawful discrimination, victimisation and harassment, advance equality of opportunity between people who share a protected characteristic and those who do not.

2.6 Risk management

The Authority recognises that it is a risk not to have an up to date Enforcement Policy in place.

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