

North East Derbyshire District Council

Healthy, Safe, Clean and Green Communities Scrutiny Committee

7th September 2018

Joint Corporate Enforcement Policy

Report of the Joint Strategic Director for Place

This report is public

Purpose of the Report

Recommendations

- To recommend for approval the Joint Corporate Enforcement Policy which will set overarching principles for enforcement activities across the Council.

1 Report Details

- 1.1 The Council is responsible for ensuring that a wide range of legislation is being properly complied with, by businesses and individuals to protect the rights and safety of the Districts residents, workers, visitors and local environment. Individual service areas are required to follow a range of legislation and regulations when considering enforcement activity and as such, many of these areas have specific enforcement policies in place. These are reviewed regularly to ensure that they reflect the most recent legislative requirements.
- 1.2 Whilst there are service specific enforcement policies, it is considered that an overarching Corporate Enforcement Policy which sets out the broad principles to be adopted by all departments and officers when exercising any enforcement functions on behalf of both councils, is good practice. It will ensure that the Council ensures fairness, openness, and consistency in the enforcement action it takes.
- 1.3 Bolsover District Council last reviewed the Corporate Enforcement Policy in June 2013. This was a review of the 2008 policy was written in accordance with the Enforcement Concordat, which has since been superseded, first by the Regulators' Compliance Code, and more recently by the Regulators' Code.
- 1.4 The Legislative and Regulatory Reform Act (2006) requires Local Authorities to have regard to the principles of good regulation when exercising a specified regulatory function. The principles provide that regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed
- 1.5 A Regulators Code came into force in April 2014, as a regulatory body, the Council is under a duty to have regard to the Code when developing policies and the operational procedures that guide their regulatory activities.

- 1.6 The proposed policy, attached as appendix 1 to this report, creates one single, joint Corporate Enforcement Policy and brings it in-line with current requirements. The intention of the Policy is to ensure that any enforcement action is compliant with the relevant legislation, codes of practice and government guidance. Also it must be transparent and accountable, proportionate, targeted, consistent in approach and appropriate.
- 1.7 The proposed Policy is designed to make sure that everyone knows the main principles that the council applies when carrying out enforcement work. It starts from the premise that most businesses and individuals want to comply with the law. Help and support will be provided to enable them to meet their legal obligations without unnecessary expenses, while firm action will be taken against those who flout the law or act irresponsibly.
- 1.8 This policy sets out the approach to be followed by authorised officers when making decisions in respect of compliance and enforcement activities. It sets out the levels of enforcement action available to the Councils, how we will determine which action is appropriate in the event of non-compliance and how we will conduct our investigations.
- 1.9 The diversity of regulatory powers makes it difficult to provide detailed processes in this policy. Often there are detailed and differing processes that need to be followed depending on the service. For this reason, whilst the policy sets out principles that will be followed, and more detail is contained in service specific policies which will be referenced into the policy by way of a web link. This list of policies will be reviewed and updated annually and any review of specific policies, or creation of new policies will have regard to the Corporate Enforcement Policy.

2 Conclusions and Reasons for Recommendation

- 2.1 To ensure legal compliance and to ensure that enforcement action taken by the Council is better able to resist a challenge in the courts. The policy will also ensure all departments follow the same principles when carrying out enforcement action.

3 Consultation and Equality Impact

- 3.1 The draft Corporate Enforcement Policy has been developed in consultation with all service areas of the Council involved in regulatory work.
- 3.2 The Policy will be considered by Scrutiny at both authorities and the Strategic Alliance Joint Committee before being formally approved and adopted by Executive.
- 3.3. An equality impact assessment will be undertaken once feedback has been received, from the scrutiny committees of both authorities.

4 Alternative Options and Reasons for Rejection

- 4.1 Do nothing and retain the previous published Corporate Enforcement Policy dated 2013 is contrary to current regulatory requirements and statutory guidance.

5 Implications

5.1 Finance and Risk Implications

5.1.1 There are no financial implications associated with the recommendation.

5.2 Legal Implications including Data Protection

5.2.1 The preparation and publishing of the policy is not in itself a legal requirement. However, the Regulators' Compliance Code, issued in accordance with section 22 of the Legislative and Regulatory Reform Act 2006, requires regulators to have regard to this Code. The code came into statutory effect on 6 April 2014. The adoption of a policy is considered to be best working practice and will assist the Council to demonstrate that it has regard to the Code.

5.3 Human Resources Implications

5.3.1 There are no human resource implications associated with the recommendation.

6 Recommendations

6.1 That Members review the attached draft Joint Corporate Enforcement Policy documents and recommend it for approval and adoption.

7 Decision Information

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed	Yes
District Wards Affected	All indirectly
Links to Corporate Plan priorities or Policy Framework	All

8 Document Information

Appendix No	Title
1	Draft Joint Corporate Enforcement Policy
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Report Author	Contact Number
Victoria Dawson Solicitor (Contentious Team Manager)	01246 242231

Report Reference –



Corporate Enforcement Policy

2018



We speak your language

Polish

Mówimy Twoim językiem

French

Nous parlons votre langue

Spanish

Hablamos su idioma

Slovak

Rozprávame Vaším jazykom

Chinese

我们会说你的语言

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or another format please call

Bolsover District Council on

01246 242424 or

North East Derbyshire District

Council on **01246 231111**

CONTROL SHEET FOR CORPORATE ENFORCEMENT POLICY

Policy Details	Comments / Confirmation (To be updated as the document progresses)
Policy title	Corporate Enforcement Policy
Current status – i.e. first draft, version 2 or final version	First Draft
Policy author (post title only)	Solicitor (Contentious team manager)
Location of policy (whilst in development) – i.e. L-drive, shared drive	S Drive
Relevant Cabinet Member (if applicable)	
Equality Impact Assessment approval date	TBC
Partnership involvement (if applicable)	
Final policy approval route i.e. Joint Strategic Alliance Committee, Cabinet/Executive/Council	Executive - BDC Cabinet – NEDDC
Date policy approved	
Date policy due for review (maximum three years)	
Date policy forwarded to Improvement (to include on Intranet and Internet if applicable to the public)	

1. Introduction

Bolsover District Council and North East Derbyshire District Councils are responsible for ensuring that a wide range of legislation is being properly complied with, by businesses and individuals to protect the rights and safety of the Districts residents, workers, visitors and local environment.

This policy sets out the approach to be followed by authorised officers when making decisions in respect of compliance and enforcement activities. It sets out the levels of enforcement action available to the Councils, how we will determine which action is appropriate in the event of non-compliance and how we will conduct our investigations.

Bolsover District Council and North East Derbyshire District Councils are required under the Legislative and Regulatory Reform Act 2006 (2006 Act) to have regard to the Regulators Code when developing this policy and the operational procedures sitting beneath it taking into consideration the six core principles listed below which underpin the Corporate Enforcement Policy;

- Supporting those regulated to comply and grow
- Simple and straight forward engagement
- Risk based regulation
- Information sharing re compliance and risk
- Provision of clear information, guidance and advice to assist in achieving compliance
- Transparency

2. Scope

The Councils takes a positive, proactive and balanced approach to ensure compliance. This policy helps to promote an efficient and effective approach to regulatory enforcement to ensure that we act in a consistent, balanced and fair manner.

This is an overarching policy which covers the whole of the Councils enforcement activities. Individual service areas will require specific enforcement policies and procedures which reflect the principles set out in this policy.

3. Principles of enforcement

3.1 Minimum Standards

It is important that there is consistent, balanced and fair enforcement across the service areas of the Councils. This Policy sets out the minimum standards to be applied by officers of the Councils in relevant circumstances.

Proportionate – all action taken by the Councils will be proportionate to the risk to the public and enforcement action will relate to the seriousness of any breaches of the law

Accountable – our activities will be open to public scrutiny, with clear and accessible policies, procedures and fair and efficient complaints procedure

Consistent but flexible – we will carry out duties in a fair and consistent manner but recognise that every situation will have its own particular circumstances and the correct course of action can only be arrived at after full and careful consideration of the facts and circumstances. Officers will need to exercise a professional judgement in determining the correct course of action.

Transparent – we will ensure that those we regulate are able to understand what is expected of them, and what they can anticipate in return. Where there is a right of appeal or other redress officers will advise those affected individuals or businesses.

Openness – the Councils will ensure information, advice and guidance is accessible and that anyone affected by enforcement actions are aware what the result of those actions will be.

Targeted – we will target our enforcement action primarily on those activities which give rise to the most serious risks to the public, workers and the environment, reflecting local need and national priority.

Shared Enforcement – in some circumstances, risks to public, workers and the environment are also dealt with by other authorities. Where appropriate we will liaise with other authorities before taking enforcement action. Joint enforcement may be required, or we may determine one body to be the enforcing authority.

Whilst the Councils seek to deliver a consistent and proportionate approach to the use of its enforcement powers, tools and actions, on occasions this is not possible. This policy is therefore not over prescriptive and allows for an element of flexibility in officers judgement.

3.2 Investigations

When the Councils investigate matters that arise we will use a range of methods for collecting evidence including but not limited to, visits to sites or premises, CCTV, interrogation of social media, noise monitoring equipment, the use of body cameras, historical data, and information sharing with other agencies.

Investigations and enforcement decisions will be carried out under the relevant legislation and in accordance with guidance or codes of practice including (but not limited to) the following;

- The Police and Criminal Evidence Act 1984
- The Criminal Procedure and investigations Act 1996
- The Regulation of Investigatory Powers Act 2000
- The Criminal Justice and Police Act 2001
- The Human Rights Act 1998
- Data Protection Act 2018
- Government Concordat on Good Enforcement
- The Equality Act 2010

4. Enforcement options

Enforcement decisions must be fair and proportionate. They must be consistent and taken in the context of ensuring that individuals, the community and the environment are adequately protected, whilst at the same time seeking to change the behaviour of the offender and encourage good practise.

There are a variety of enforcement options available to the Councils. The Council's enforcement officers will have regard to the principles contained in this policy when taking enforcement action. They will take a staged approach to the enforcement of legislation and where appropriate and in the first instances individuals or businesses should be given the opportunity to discuss and remedy the problem unless immediate action is required.

Urgent action will be taken when there is a significant risk to public safety or safeguarding issues.

The various methods of enforcement are explained below. It is important to remember that whilst the Councils adopts a staged approach, the list below is not necessarily an absolute order of escalating seriousness relative to each other. In some circumstances a combination of these methods may be a way of dealing with an offence. Every case shall be judged on its own merits and the appropriate enforcement options decided on accordingly. This is not an exhaustive list, and other enforcement options may be available and be used by the Councils.

4.1 No action

It may be appropriate not to take any action if no offence has been committed, where the offence is not causing harm or where it is not expedient to take action. The Councils must consider whether the cost of compliance to the offender outweighs the impact of the contravention on the community and where the cost of taking action to the Councils outweighs the impact of the offence on the community.

It may also be inappropriate to take formal action where a trader has ceased to trade, or the offender is elderly or frail or where formal action could seriously damage their wellbeing.

4.2 Informal action and advice

When the offence being committed is not serious enough to warrant formal action or where the investigating officer has good reason to believe that informal action will be successful this is the preferred approach. Compliance advice, guidance and support is used as a first response in many cases taking into account matters such as (but not limited to):

- Previous history of compliance
- Confidence in the individual or management
- The risk of none compliance
- the risk to the general public

4.3 Issue of a fixed penalty notice

The Councils have power to issue Fixed Penalty Notices (“FPN”) in respect of some breaches, normally for more minor offences and breaches of statutory Orders or Notices. If the FPN is not paid, the Councils may commence criminal proceedings in respect of the original offence. Where this is a repeat offender, or the FPN was ineffective, escalating the enforcement action may include the possibility of a prosecution for the original offence under the primary legislation.

4.4 Voluntary Undertakings

The Councils may accept voluntary undertakings that breaches will be rectified and/or recurrence prevented. Any breach of voluntary undertaking will be taken seriously and is likely to lead to enforcement action.

4.5 Formal notices and orders

The Councils have powers to issue statutory notices and orders. These are legally binding and failure to comply can be a criminal offence. The Statutory Notice/Order will set out the actions required and timescales for compliance, and may list the actions that the Councils may take or are considering taking.

These are likely to be used, for example, in cases of sustained or repeated non-compliance, where the consequences of non-compliance are potentially serious or remedial measures are essential.

4.6 Seizure of goods or equipment

Certain legislation enables authorised Officer’s to seize goods, animals, equipment or documents for example unsafe food, sound equipment which is being used to cause a statutory nuisance, unsafe products or any goods which might be required as evidence for possible future court proceedings. This list is not exhaustive.

4.7 Works in default

Works in default are works which have been specified in a legal notice served on an individual or company. If the notice expires and these works have not been carried out the Councils may carry them out in default of the business or individual on which the notice was served. Where legislation allows, the Councils will seek to recover the cost the Council has incurred in carrying out the work.

4.8 Suspension, revocation or refusal to renew a licence

The Councils issue a number of licences and permits, many contain conditions which require the licence holder to adhere to. Breach of these conditions may lead to a refusal or a renewal, revocation or suspension of a licence.

4.9 Prosecution

The Councils recognises that the decision to prosecute is serious and could have far reaching consequences for the offender and/or a business. We will prosecute in respect of serious or recurrent breaches, or where other enforcement actions have failed to secure compliance.

Before a prosecution is considered the Councils will have regard to the provisions of The Code for Crown Prosecutors as issued by the Director of public Prosecutions: https://www.cps.gov.uk/sites/default/files/documents/publications/code_2013_accessible_english.pdf

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Council's prosecutor will consider the following two tests;

Is there enough evidence against the Defendant? The prosecutor must be satisfied that there is enough evidence for a "realistic prospect of conviction" against each defendant

Is it in the public interest for the Council to bring the prosecution? Prosecution will normally happen unless the public interest factor clearly outweighs those in favour of prosecution.

4.10 Prosecution without warning

As a general rule, a person or business will be given a reasonable opportunity to comply with the law, although in some circumstances, prosecution may be undertaken without prior communication or contact, e.g.

- The contravention is a particularly serious one
- There has been a particularly blatant disregard of the law
- statutory notice has previously been issued for a similar offence

4.11 Administrative penalty

Where an allegation of Housing/Council Tax Support fraud has been investigated and officers are satisfied that an offence has been committed, it may, dependant on the severity of the offence and other factors of the case, be considered more appropriate to give the offender opportunity to pay an Administrative Penalty instead of prosecution.

4.12 Simple cautions

Simple Cautions can be an alternative to prosecution (the offender being over the age of 18 years). These can be issued in order to deal quickly and simply with less serious offences, or to reduce the chance of repeat offences. A simple caution would not be an option where an individual or business denies the offence.

4.13 Deductions from ongoing benefits or other state benefits

The Councils treat the recovery of overpayments as a serious matter and will pursue full repayment of any benefit deemed to have been overpaid and recoverable. However each case is considered individually and on its own merits.

4.14 Proceeds of crime applications

The Councils either through its own enforcement officer or in connection with the police may make an application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender and/or seize cash. The purpose of any

such proceedings is to recover the financial benefit that the offender has gained for the criminal conduct.

4.15 Enforcement agents

The Councils will instruct Enforcement Agents to recover monies and sums due to the Council and to enforce its common law powers. The Councils will keep a record of such instructions and the reasons why such a service is required.

4.16 Injunctive and other civil sanctions

An injunction is an order from court which requires a breach to be rectified and/or prevented from occurring. Injunction applications will be made in accordance with relevant legislation.

In cases involving anti-social behaviour, where early and informal intervention has been used and failed or is not appropriate, a civil injunction will be sought to include prohibitive and positive requirements.

Injunctions may also be used to exclude people from specified locations (including their normal residence) and include a power of arrest if there is use or threatened use of violence or there is a significant risk of harm. Injunction applications may be made without notice to the individual depending on the circumstances of the case and taking into account the statutory criteria.

A failure to comply with an injunction constitutes contempt of court, this is a serious offence any may lead to imprisonment and/or a fine.

4.17 Possession order

A possession order may be sought in the County Court to enforce a breach of the tenancy agreement or recovery of business premises where there is a breach of a lease.

4.18 Closure Order

A closure order may be sought in the Magistrate's court to prohibit access to a property to prevent disorderly, offensive criminal behaviour, nuisance or disorder.

4.19 Money judgement

Where a money judgment has been ordered by the Court, the Councils will seek to enforce such an order through the various enforcement options available and may include an application to force the sale of that individual's property if a charging order is obtained. The Councils may also seek to transfer the judgment to the High Court and seek to recover monies owed by instructing a High Court Enforcement Officer.

4.20 Warrant applications

If an officer needs to enter and search premises or undertake works in default, an application for a warrant will be made at the Magistrates Court if voluntary entry is not provided. Such applications are usually made without notice to the person concerned but only after reasonable efforts have been taken to secure peaceful entry. Applications will only be made by officers with authority to do so.

5. Decision making

The decision to take action will be taken by those with authority to do so in accordance with the Council's Constitution and Scheme of Delegations.

All appropriate officers will be authorised by the Councils to exercise powers under specific statute and subordinate legislation. The level of authorisation will differ depended on qualification, experience and competence.

All decisions to prosecute will be fully documented.

6. Training

The Councils will ensure that officers have the necessary knowledge and skills to support those we regulate. All officers undertaking enforcement duties will be suitably trained and qualified to ensure that they are fully competent to carry out enforcement activities.

7. Partnership working

The Councils will ensure liaison between Council services is coordinated and effective enforcement is carried out where the matter is related to more than one of the Council's Services.

The Councils will liaise with other regulatory bodies, enforcement agencies and partner agencies where appropriate and to maximise the effectiveness of any enforcement. This may be where an enforcement matter extends beyond the Districts boundary of where the Council shares responsibility with other organisations.

Other agencies include but are not limited to the Police, Fire and Rescue Service, other Local Authorities, Government agencies, Trading Standards, and Health and Safety Executive.

Where other organisations or individuals carry out enforcement on the Council's behalf they will be required to do so in accordance with the principles set out in this Policy.

8. Data Protection

The Councils needs to hold and process personal information so that it may properly perform its statutory functions. The Data Protection Act 2018 requires that the Councils looks after personal information it holds securely and processes that information strictly in accordance with the conditions of the legislation. The Councils may keep only what information is needed and must dispose of it in accordance with the Council's Data Retention Schedule.

The Councils may share personal information held where legislation allows and will have information sharing protocols in place where required. Prior to sharing information, the Councils will consider the proposed use of the information, the secure transfer of information and measures that are in place to keep the information secure once it has left the Council's control.

The Councils are signatories to the Derbyshire Partnership Forum Information Sharing Protocol which is an overarching document that sets out the framework for partner organisations across Derbyshire to manage, process and share personal and sensitive personal information on a lawful, fair and transparent basis to enable them to meet both their statutory obligations and the needs and expectations of the people they serve.

9. Link to other policies

The Corporate Enforcement Policy is an overarching policy that applies to all Bolsover District Council and North East Derbyshire District Council services. Specific service areas may have additional and more tailored policies or procedures for enforcement in their specific service areas and these should be read in conjunction with this policy, the Joint Equality and Diversity Policy for Service Delivery and any other relevant Council policies. A list of current Council Policies can be found at [LINK TO BE INSERTED](#)

10. Appeals and Complaints

Any appeals in relation to enforcement action should be taken in accordance with the statutory appeals process as outlined in the relevant legislation. Where there is a right of appeal, we will ensure individuals/business are made aware.

The Council has its own Compliments, Comments and Complaints procedure.

We want you to complain if you feel you've been poorly or unfairly treated by any of our services and we will do our best to put things right when things have gone wrong. Please be aware if you are unhappy with a decision, you should follow the appropriate appeal procedure, further information can be found from the appropriate service area. If you are unhappy with the *process* then you can make a complaint about us or any of our services by completing the on-line Compliments, Comments and Complaints form.

For **Bolsover District Council** you can write to us at The Arc, High Street, Clowne, Derbyshire S43 4JY, call into any one of our Contact Centres and asking one of our employees to put your complaint in writing for you ,or call the Contact Centre on 01246 242424.

For **North East Derbyshire District Council** you can write to us at, Mill Lane, Wingerworth, Chesterfield, S42 6NG, or call the Contact Centre on 01246 231111.