

CABINET

19 July 2016

Title: Regulatory Services Enforcement Policy 2016 - 2020	
Report of the Cabinet Member for Enforcement and Community Safety	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Director: Jonathon Toy, Operational Director for Enforcement	
Accountable Strategic Director: Claire Symonds, Strategic Director for Customer, Commercial and Service Delivery	
Summary <p>This report seeks Cabinet's approval of a revised Enforcement Policy for the Council's Regulatory Services.</p> <p>The Enforcement Policy is a core part of the council's approach to enforcement, an Ambition 2020 priority. The Council is establishing a new enforcement service, bringing together a range of teams, whose combined skills, professional knowledge and expertise, can set standards of behaviour which encourages civic pride and take action against those individuals and businesses who continue to act unlawfully or anti socially.</p> <p>The new service will include all the regulatory enforcement functions relating to Environmental Health (Food, Health & Safety), Environmental Protection, Noise and Nuisance, Trading Standards, Licensing, Private Sector Housing and the Enforcement services (Street Networks).</p> <p>The intention of this new Enforcement Policy is to ensure that all enforcement action is compliant with all relevant legislation, code of practices and government guidance. Also it must be fair, clear, transparent, consistent, proportionate, risk based and robust. It is aimed to assist local businesses contributing to supporting the local economy as outlined in the Council priorities and corporate plans. The Council is required to publish its Enforcement Policy setting out how it will enforce legislation and ensure compliance.</p> <p>The revised Enforcement Policy is at Appendix 1 to this report.</p>	
Recommendation(s) <p>The Cabinet is recommended to adopt the revised Regulatory Services Enforcement Policy as set out at Appendix 1 to the report, for implementation by all relevant Council regulatory functions.</p>	

Reason(s)

1. To ensure that the Council's enforcement policy complies with the new requirements in the Regulators' Code.
2. To ensure that any enforcement action taken by the Council's Authorised Enforcement Officers of the Council are proportionate, consistent, fair and effective

1. Introduction and Background

- 1.1 The council has set out a series of ambitious plans to transform the borough by harnessing its potential and placing Barking and Dagenham as London's Growth Opportunity. These plans form Ambition 2020, a set of clear priorities where the council and its partners deliver significant change into the next decade. Enforcement is a cornerstone to these ambitions and provides the framework where businesses, residents and visitors take ownership for the area, their actions and standards are set which encourage civic pride.
- 1.2 This new policy is to create a borough wide approach to enforcement providing a consistent framework for making enforcement decisions.
- 1.3 It reflects recent changes in the legislative powers now under the control of the Local Authority. It supersedes the existing enforcement policy adopted by the Council on 29 January 2002 which was covered by the former Health and Consumer Service Division.
- 1.4 The Council deals with a wide range of enforcement activities covering in the region of 150 primary Acts of Parliament together with a number of regulations and orders. The legislation covered by these services deals with issues and seeks to protect consumers, residents and businesses as well as the environment. Investigations under these Acts can result in both informal and formal actions being taken to ensure compliance with the law.
- 1.5 Enforcement in the context of this policy includes the use a range of activities to ensure compliance with legislation, such as:
 - Conducting regular inspections of business premises
 - Responding to complaints and enquires from the public about businesses and individuals
 - Carrying out education and awareness programmes
 - Conducting investigations to support the enforcement actions
 - Patrolling the borough and serving fixed penalty or statutory notices and taking prosecution action for a range of environmental offences as appropriate.

The range of enforcement may change as new legislation is enacted.

- 1.6 The proposed policy covers all aspects of the regulatory functions and seeks to assist officers in the decision making process when dealing with enforcement issues. It sets out a consistent approach on the use of all enforcement tools at

officers' disposal to achieve effective and efficient compliance with relevant legislation.

- 1.7 The Policy recognises 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 expense, while firm action will be taken against those who flout the law or act irresponsibly.
- 1.8 Particular regard has been given to the provisions of the Regulators' Code and the provisions outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008.
- 1.9 The policy highlights the link to the Council's wider Ambition 2020 agenda.

2. Proposal and Issues

- 2.1 Enforcement actions are taken within the context of a legal and policy framework. The Council's enforcement services will carry out their enforcement related work with due regards to the Regulators' Code.
- 2.2 The obligations in the Code with regards to compliance and enforcement action relates to the Macrory Review. One of the key points raised in the Review was that regulators should publish an enforcement policy. It is enshrined in five principles of good regulations that every action should be transparent, accountable, proportionate, and consistent and targeted where action is needed.
- 2.3 The decision to use enforcement action will be taken in the context of this policy and any other relevant policies of the Council, but also in the context of the particular case under consideration. Factors taken into consideration will include but will not be limited to:
 - The risk that the breach poses to the health, safety or economic welfare
 - Whether the offence involves a failure to carry out the requirements of a statutory notice or order
 - The degree of pre-meditation of the offender
 - Where there is a previous history of warning or cautions for similar offences
 - There is reckless disregard for health and safety
 - Incidents such as the obstruction of an officer or aggressive behaviour.
- 2.4 The policy will take into account the following factors to achieve compliance:
 - The person, business or household ability to comply
 - The willingness of the person, business or household to comply with the action proposed by the council.
 - The level of complaints received relating to the person, business or household in the past.

This list is not exhaustive and will depend on the facts of each case.

- 2.5 All decisions in relation to appropriate action will be taken based on the key principles set out as above. It is also in accordance with the Code of Crown

Prosecutors, which details considerations to be taken into account before commencing enforcement legal proceedings.

- 2.6 The revised policy takes account of the issues such as the recent legislative changes and the breadth of the Council's regulatory functions. In addition, it does not infringe legislation such as the Human Rights Act 1998.
- 2.7 The policy provides a framework where all council officers can play an active part in enforcement. Whether the role is in reporting, intervening or enforcing, all officer will be provided with the knowledge, information and training that will help them recognise the importance of enforcement in promoting social responsibility and increasing civic pride.

3. Options Appraisal

- 3.1 The options are limited as the council is required to have an enforcement policy as outlined in the Legislative and Regulatory Reform Act 2006 and the Regulatory and Enforcement Sanctions Act 2008.
- 3.2 There is an option to extend the current enforcement policy which was last adopted in 2002. This approach is not recommended as the policy will not be fully compliant with the up to date legal requirements set out in the Regulators Code. Also it would be open to challenge from the government department, the Better Regulation Delivery Office.

4. Consultation

- 4.1 All regulatory teams within the Council have been consulted about the policy and any comments or suggestions have been incorporated into the policy where appropriate.
- 4.2 The draft policy was also presented to the Licensing and Regulatory Board on 20 April 2016 and was subject to pre-decision scrutiny by the Safer and Stronger Community Select Committee at its meeting on 14 June 2016. The comments of those committees are reflected in the revised draft policy.
- 4.3 Business engagement, consultation and feedback are actively encouraged by the Regulators' Code. Work is ongoing through the Local Business Support Focus Group to hear the views from the local businesses about the Council's approach to enforcement.
- 4.4 It is intended that there will be ongoing consultation with businesses which will help inform any future revision to the agreed policy.

5. Financial Implications

Implications completed by: Richard Tyler, Interim Group Manager

- 5.1 The policy provides a framework for the delivery of LBBD's regulatory services, which will set out the principles of good enforcement practice. This will improve transparency around enforcement processes and potentially streamline the

management of enforcement cases. The costs emerging from the adoption and implementation of the Enforcement policy will be met from existing budgets.

- 5.2 The implementation of the new policy will ensure that enforcement decisions are appropriate, based on areas of risk, and that the Council does not incur excessive costs associated with its enforcement activities.

6. Legal Implications

Implications completed by: Chris Pickering, Principal Solicitor

- 6.1 This is a revision of the Council's Enforcement Policy. By virtue of the Regulatory Enforcement and Sanctions Act 2008, Legislative and Regulatory Reform Act 2006, and the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended), the Regulator's Code was issued under parliamentary approval as specified regulators must have regard to the code when determining policies, setting standards or giving guidance in relation to their duties.

7. Other Implications

- 7.1 **Crime and Disorder Issues** - The new policy fully supports section 17 of the Crime and Disorder Act.
- 7.2 **Health Issues** - There are no direct implications in adopting the enforcement policy and minimal environmental impact from adoption of the policy itself. However successful application of the policy will assist in delivering efficient regulation which may reduce environmental damage, and ensure that resources are targeted where there is most significant environmental harm.
- 7.3 **Risk Management** - The enforcement policy is based on a risk based approach to ensuring compliance with the variety of legislation which is administered by the Council. Failure to meet new and existing statutory requirements must be specifically addressed in the Council risk register at the Regulatory managers meetings. Controls are in place to mitigate the risk include training, periodic update of the Scheme of delegation and Services business planning process.
- 7.4 **Corporate Policy and Customer Impact** - A screening for the equalities impact assessment has been carried out on the effect of the policy. The policy has low relevance in relation to its impact on the areas under the statutory duties contained in the equalities impact assessment, but contributes towards the corporate priorities of the council, open and transparent decision making. The Council, when taking decisions in relations to any of its functions, must comply with its public sector equality duty as set out in S149 of the Equality Act 2010 Act.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- **Appendix 1** - Regulatory Services Enforcement Policy 2016 - 2020