

**AGENDA ITEM NO. 14**

**COUNCIL**

**Date**            **27 FEBRUARY 2014**

**Title**            **CORPORATE ENFORCEMENT POLICY**

**1. PURPOSE/SUMMARY**

To seek approval and adoption of the revised Corporate Enforcement Policy.

**2. KEY ISSUES**

- Cabinet approved the draft corporate enforcement policy for consultation with stakeholders in November 2013. The consultation asked if the policy was clear, helpful and easy to understand.
- The consultation was extensive and included a variety of stakeholders, ranging from local public houses/restaurants, developers/agent forum, CAB, Landlords association together with the Police and CCC teams.
- We received 9 responses to the consultation, and these identified positive support for the policy some with only minor changes and clarifications in relation to acts and regulations.
- The final version of the policy for Members’ consideration is attached as Appendix A. This policy will be considered by Cabinet on 27 February 2014, prior to the Council meeting, following which any comments or amendments will be reported to Council as part of considering this report.
- Enforcement work is undertaken in many service areas within the Council which has to be carried out in a consistent manner and in the context of a defined policy. This is important because enforcement by the Council is often co-ordinated across more than one service area and increasingly involves partner agencies, such as the police.
- The impact of enforcement can be very significant on the individual or business concerned and so has to be carefully considered. It is also necessary to manage the expectations of customers who may feel the Council should take enforcement action at once, when other more effective solutions may be more appropriate.
- The policy needs to be clear about the approach the Council will take and that the “enforcement mix” follows a positive Prevention, Intervention and Enforcement pattern to ensure compliance by helping and encouraging Business and the wider community to understand and meet their regulatory duties.
- The Enforcement Policy follows the Government’s principles as set out in the Regulators Code.

### 3. RECOMMENDATION(S)

It is recommended that Council:

1. Approves for adoption the Council's Enforcement Policy as set out in Appendix A

<b>Wards Affected</b>	All
<b>Forward Plan Reference No.</b> (if applicable)	
<b>Portfolio Holder(s)</b>	Cllr Chris Seaton, Deputy Leader of the Council
<b>Report Originator</b>	Annabel Tighe – Environmental Health Manager Rory McKenna – Principal Solicitor Litigation and Planning
<b>Contact Officer(s)</b>	Annabel Tighe – Environmental Health Manager Richard Cassidy – Corporate Director Rory McKenna – Principal Solicitor Litigation and Planning
<b>Background Paper(s)</b>	The Regulators' Code



# Corporate Enforcement Policy

February 2014



## **1. INTRODUCTION**

1.1 The purpose of this policy is to set out Fenland District Council's intended approach to bring about compliance with the regulatory requirements it enforces.

1.2 Effective and well-targeted enforcement is essential in promoting fairness and protection from harm and Fenland District Council will adopt a positive Prevention, Intervention and Enforcement approach to ensure compliance by helping and encouraging Business and the wider community to understand and meet their regulatory duties and by responding proportionately to regulatory issues that we identify.

1.3 As an integral part of this policy we will work with businesses and our communities throughout Fenland for the benefit of residents and the Fenland economy. The Council recognises that enforcement can be successful only if the policy has the support of both our local communities and local businesses. So, we will consult on our Draft Policy and take full account of feedback from all stakeholders before finalising and publishing the policy. We will also review the policy from time to time.

1.4 The Council also recognises that we need to work in partnership with other agencies in providing enforcement services. For example, Fenland District Council works closely with the Police and others in the development of neighbourhood policing to build safer, stronger communities.

1.5 The Corporate Enforcement Policy is the core of our approach to enforcement. It incorporates best practice and sets common principles that we will follow. This Enforcement Policy describes the range of enforcement activities we use and how we intend to comply with the Regulators' Code. The Regulators' Code provides a flexible, principles based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities.

1.6 The Council must have regard to the Code when developing policies and operational procedures that guide our regulatory activities. The Council must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators. If the Council concludes, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, the Council is not bound to follow that provision, but should record that decision and the reasons for it.

1.7 To ensure consistent performance across a broad range of activities and duties, we will produce from time to time, supplementary operational policy documents that give details of our range of services, the standards of service our customers can expect and the criteria we will use when deciding on how we will deal with infringements.

## **2. A BALANCED APPROACH TO ENFORCEMENT**

2.1 The main purpose of local government enforcement work is to protect the public, the environment, consumers and legitimate businesses by making sure that legal requirements are met and that everyone acts/operates within the law. It does not just mean taking formal action, such as prosecution, but includes a wide range of actions and measures to make sure that things are as they should be and giving help or advice. We will generally endeavour to support both businesses and individuals to meet their legal obligations before considering any kind of enforcement action.

2.2 We recognise that most business owners, their employees and the public want to comply with the law and thereby operate legitimately and responsibly. We will help and advise wherever possible but will take firm action against those who ignore legal requirements or act irresponsibly.

To achieve this we will:

- Make available information and advice on the law in electronic and printed formats
- Publicise enforcement campaigns, especially for new initiatives and new or changed laws
- Make promotional visits to increase awareness to groups within our communities and to business forums.
- Work with our partner agencies where appropriate to co-ordinate enforcement activities for the benefit of our communities and where a more effective resolution can be achieved.
- Carry out inspections.
- Investigate complaints.
- Examine goods, documents or notices.
- Take samples or make test purchases.
- Talk to witnesses and obtain witness statements, where appropriate.
- Conduct interviews to investigate offences and obtain the facts.

2.3 So we can see things from the point of view of a customer or ordinary member of the public, we may carry out informal visits but not introduce ourselves as Council officers.

There is a range of actions we can take where we find problems, breaches or contraventions:

- Give verbal or written guidance.
- Give written instruction.
- Send a cautionary letter or notice.
- Issue Fixed Penalty Notices.
- Serve formal Statutory Notices
- Take samples and seize goods or documents.
- Carry out a formal interview under caution.
- Issue a formal caution.
- Suspend or revoke a license or permit
- Take out an injunction.
- Prosecute offenders.
- Issue legal proceedings (civil or criminal)

2.4 The Council will take an evidence based approach to determining the priority risks in our areas of responsibility and will allocate resources where they would be most effective in addressing those priority risks. The Council will consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action.

## 2.5 Guiding Principles:

- **Regulators' Code** - Fenland District Council has adopted the Code which has been laid before Parliament in accordance with the Legislative and Regulatory Reform Act 2006. The Council is committed to its aims and will abide by the following principles when considering and undertaking enforcement.
- **Openness** - We will provide accessible information and advice on the legislation we enforce, wherever possible in plain language and in languages understood by those affected. We will be open about how we work and why it may be necessary to take enforcement action.
- **Helpfulness** - We believe that prevention is better than cure and we will actively work to advise and assist to achieve compliance with the law. Our staff will be courteous and efficient, identify themselves by name where appropriate, and carry an identity card with a photograph. We will offer a contact point, telephone number and email address for further help.
- **Clarity** - We will work with our customers to help them meet their legal obligations without incurring unnecessary expense. Advice will be put clearly and simply, confirmed in writing on request, explaining what is necessary, why and when, together with the implications of non-compliance. Legal requirements will be clearly distinguished from best practice advice.
- **Consistency** - We will carry out our duties in fair and consistent ways. We have arrangements in place to promote consistency, including liaison with other Local Authorities and agencies e.g. The Police, Health & Safety Executive, parish councils, etc., particularly where we may share an enforcement role.
- **Suitable Action** - Every case is unique and must be considered on its own facts and merits. When making decisions on the actions we will take, we will always take account of our service standards (see section 4).
- **Human Rights** - We will have regard to fairness and individuals' human rights in all of our enforcement work through conforming to the European Convention on Human Rights (as implemented by the Human Rights Act 1998).
- **Equal Opportunities and Diversity** - We believe in openness and equality in the way we provide services and that every individual is entitled to dignity and respect. When making enforcement decisions we aim to ensure that there will be no discrimination against any individual on the basis of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status, or previous criminal conviction or caution which is not relevant to the current issue.

### 3. POLICY APPLICATION

3.1 The policy is relevant to services in the following service areas:

- Hackney Carriage and Private Hire Vehicle Driver and Operator Licensing, Licensing Act 2003, Public Entertainment, Sex Establishments, House to House and Street Collecting Licensing, Gaming Act and Scrap Metal Dealing.
- Revenue recovery and the investigation of Housing Benefit, Council Tax and Business Rates fraud.
- Planning Development Control and Building Control
- Environmental Services, Environmental Protection, Anti-social Behaviour, Food and Safety and Port Health. Including the Clean Neighbourhoods and Environment Act and the use of Dog Control Orders.
- Private Sector Housing Conditions.
- Off street parking at specified locations
- Any other service, which carries out enforcement duties.

3.2 Certain services require detailed specific enforcement policies and when this is the case these policies will follow and complement the principles and practice of the Corporate Enforcement Policy. Therefore, detailed policies must be read in conjunction with this policy.

### 4. SERVICE STANDARDS

4.1 If officers find breaches of the law they have to choose the most appropriate method of achieving compliance from the range of possible actions available to them.

4.2 Action taken will be **proportionate** to the risk to people and property caused by the breach and as far as the law allows will take account of the circumstances of the case and the attitude of the alleged offender.

4.3 Emphasis will be given to informal enforcement actions that support the achievement of the Council's long term objectives.

4.4 Before we take formal enforcement action, there will be an opportunity to discuss the circumstances of a case, unless immediate or emergency action is required (e.g. to prevent destruction of evidence, or where there is an imminent risk to health and safety, damage to property or the environment or in some situations when an officer has reason to issue a fixed penalty notice. .

4.5 Where immediate action is considered necessary, an explanation of why such action is required will, where possible, be given at that time. However, in certain cases, where emergency action is deemed necessary, no notice is required to be given in law. Nevertheless, we will endeavour to give notice, if possible, in such cases.

4.6 Where there are rights of appeal against formal action, advice on how to appeal will be clearly set out in writing at the time the action is taken.

4.7 All communications will be clear and in plain English and will distinguish between practical advice, best practice and legal requirements. Appropriate translated material will be provided



where necessary and practical help provided for people with impaired hearing, vision or other impairment.

4.8 Enforcement action may be taken by the Council alone or in conjunction with other agencies such as the Police, Department of Works and Pension, Inland Revenue, and County Council.

## **5. FORMAL ENFORCEMENT ACTION**

This part of our Enforcement Policy sets out how we will deal with any alleged breach of law, which the Council is empowered, or duty bound to enforce:

### **5.1 Verbal Warnings and Advice**

The Council may seek to resolve matters informally whenever possible. Accordingly, advice and/or verbal warnings may usually be sufficient in the majority of cases as a means of resolving minor offences and technical infringements that are capable of being sorted out immediately and are unlikely to be repeated. Failure by alleged offenders to act on verbal warnings or advice may result in more serious enforcement action being taken against them.

### **5.2 Written Warnings and Advice**

Where the issue demands a more formal approach than verbal advice, written guidance clearly identifying the infringement involved and giving advice on how to put it right and a deadline by which to do it will be provided. Failure to comply with written warnings or advice could result in more serious enforcement action being taken. The circumstances of each case and the implications of infringements will be taken into account.

### **5.3 Fixed Penalty Notices (FPNs)**

5.3.1 FPNs are a means to impose an immediate financial penalty on an offender for certain criminal offences. The Council will use FPNs wherever a local or district-wide need is identified to deal with minor enviro-crime offences such as dog fouling, littering, fly tipping, workplace smoking and off street parking at specified locations.

5.3.2 We will carry out campaigns and produce information about the use of FPNs.

### **5.4 Formal Statutory Notices**

Notices may be served to require offenders to stop illegal activities immediately to give them reasonable time to remedy a breach. Any time allowed to put things right will be reasonable, but will take into account the implications of the contravention.

Statutory Notices may be issued where:

- There is a statutory duty to do so;
- There are significant contraventions of legislation;
- There is a lack of confidence in the individual or management of a business to respond to an informal approach or this approach has previously failed;
- There is a history of non-compliance;
- Standards are generally poor with little management awareness of statutory requirements;
- The consequences of non-compliance could be potentially serious to public health, or cause public nuisance, or be irreversible;

- Where, in addition to prosecution, measures need to be taken to remedy conditions that are serious, deteriorating; or
- Failure to comply with a statutory notice will usually result in prosecution and/or we may carry out any works in default and recovery our cost of doing so.

## 5.5 Formal Caution

A formal caution will only be considered when all the evidential requirements necessary to bring a prosecution are met, but the circumstances surrounding the infringement are such that a more lenient approach to prosecution is appropriate. Any formal caution will follow the criteria laid down in relevant Home Office Guidelines. If a decision to offer a formal caution is rejected by the alleged offender, then a prosecution will normally follow.

## 5.6 Prosecution

5.6.1 Before a prosecution is considered the Council will have regard to The Code for Crown Prosecutors.

The decision to prosecute or to recommend an out-of court disposal is a serious step that affects suspects, victims, witnesses and the public at large and must be undertaken with the utmost care. It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible.

Prosecutors should not start or continue a prosecution which would be regarded by the courts as oppressive or unfair and an abuse of the court's process.

Prosecutors must only start or continue a prosecution when the case has passed two stages: (i) the evidential stage; followed by (ii) the public interest stage.

- The Evidential Stage

Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

- The Public Interest Stage

In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.

A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour.

When deciding the public interest, prosecutors should consider each of the following questions so as to identify and determine the relevant public interest factors tending for and against prosecution.

- a) How serious is the offence committed?
- b) What is the level of culpability of the suspect?
- c) What are the circumstances of and the harm caused to the victim?
- d) Was the suspect under the age of 18 at the time of the offence?
- e) What is the impact on the community?
- f) Is prosecution a proportionate response?

## g) Do sources of information require protecting?

5.6.2 Before making a decision whether or not to prosecute, consideration will also be given to:

- How well prosecution supports the achievement of corporate aims or the delivery of corporate priorities
- Action taken by other enforcement agencies in relation to the same facts to avoid duplication
- The likelihood of the alleged offender being able to establish a statutory defence
- The probable public benefit of a prosecution and the importance of the case - e.g. the possibility of establishing legal precedent
- Cost effectiveness of prosecution - a need to balance likely overall cost against the “value” of the likely outcome

### **5.7 Injunctive Action**

Injunctive action may be considered where an alleged offender persistently acts in a way that acts against the collective interests of the public or where formal undertakings are ignored.

In cases involving the use or threat of violence, we will consider applying for an urgent injunction without giving the individual prior notice.

### **5.8 Works in Default**

Some legislation gives power to the Council to carry out works itself to achieve compliance, e.g. with a Statutory Notice. These powers will be used in situations where it is clear that the works required will not be carried out, even if reasonable additional time has been allowed, taking account of all the circumstances of each case. The Council will always seek to recover all costs reasonably incurred in carrying out works in default.

### **5.9 Anti-social Behaviour**

In relation to anti social behaviour the Council acts through the Fenland CSP and its partnership members. Our work here embodies the PIE approach and uses a range of measures in the context of the Government's policy.

### **5.10 No Action**

In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of action taken by the offender to comply outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a business has ceased to trade, or the offender is elderly and frail and formal action could seriously damage their well being. A decision to take no action will take into account the implications of the contravention. Usually a decision to take no action will only be made where the breach is not a serious one.

## **5.11 Referral to another Agency**

Subject to the provisions of Data Protection and Human Rights laws information on infringements will be passed to other interested enforcement agencies.

## **5.12 Naming Offenders**

The names and trading addresses of businesses or individuals who act in ways that represent significant risk of detriment to communities, particularly the young and vulnerable, may be published. Offenders may also be named if it is felt that by doing so could act as a deterrent within the community to offences of a similar nature. This action will be taken in circumstances where:

- It is in the public interest to do so
- There is no risk of prejudicing legal proceedings or other formal enforcement action
- To do so does not breach Human Rights or Data Protection law or the Children and Young Persons Act 1933.
- Following prosecution.

## **6. MANAGEMENT SYSTEMS**

6.1 Staff competency and the consistency of enforcement will be reviewed by each service where appropriate.

6.2 The Council will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, as far as is reasonably practicable, a uniform and consistent approach.

6.3 Where local or national co-ordinating bodies exist, the Council will ensure that wherever possible its enforcement practices are consistent with best practice identified.

6.4 A review of enforcement activities may involve any of the following:

- A high level review of enforcement standards by members of the Council;
- Quality Assurance systems;
- Monitoring visits by line managers;
- Shadowing visits by colleagues;
- Monitoring of correspondence and statutory notices;
- Peer review exercises;
- Internal training sessions and workshops on enforcement issues;
- Customer satisfaction surveys;
- Business focus groups.

## **7. TRAINING AND APPOINTMENT OF OFFICERS**

7.1 The Council will ensure that their officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches. The Council will also ensure that their officers understand the statutory principles of good regulation and of the Regulators Code, and how they deliver its activities in accordance with them.

7.2 All officers will be formally authorised by the relevant Council to exercise specified powers under relevant statutes.

7.3 The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines.

7.4 Authorisation will be in writing and in a warrant card form, which will be shown on request. A copy of an officer's authorisation will be held in their personal file.

7.5 The Council supports the principle of continuing professional development and will ensure that all officers are given additional in-post training to maintain up to date knowledge and skills.

## **8. APPEALS & COMPLAINTS**

8.1 The Council will provide an impartial and clearly explained route to appeal against a decision or a failure to act in accordance with this Code. Individual officers of the Council who took the decision or action against which the appeal is being made should not be involved in considering the appeal. This route to appeal should be publicised to those who are regulated.

8.2 The Council will provide a timely explanation in writing of any right to representation or right to appeal. This explanation should be in plain language and include practical information on the process involved.

8.3 The Council will make available to those they regulate, clearly explained complaints procedures, allowing them to easily make a complaint about the conduct of the Council.

8.4 The Council will have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those they regulate.

8.5 The Council also has its own complaints procedure and further information about this can be obtained from the leaflet entitled:

“What to do if you feel that the Council has provided an unsatisfactory service”

This leaflet is available at all Fenland @ Your Service Shops, and on the Council's website and business reception.