

Communities Committee

Item No.

Report title:	Review of the Enforcement Policy and the Consumer Services Policy
Date of meeting:	19 October 2016
Responsible Chief Officer:	Tom McCabe - Executive Director, Community and Environmental Services
Strategic impact The Enforcement and Consumer Services Policies provide a framework to ensure that we work in an equitable, practical and consistent manner in the way we deliver regulatory activities and law enforcement. Norfolk County Council is committed to the principles of better regulation, reducing burdens on business with proportionate responses and ensuring we act to protect and support residents, businesses and the environment.	

Executive summary

Enforcement Policy

The Community and Environmental Services (CES) Directorate is responsible for a range of regulatory functions, including Trading Standards, Planning enforcement (mineral and waste sites), Flood and Water (land drainage), Highways (networks, maintenance and blue badge enforcement) and Norfolk Fire and Rescue (fire safety). Each area of work operates under different legislation and each has its own framework of regulations, codes of practice and guidance.

The current Enforcement Policy was originally developed in 2013 in conjunction with a range of stakeholders, including business representatives, and is subject to annual review by members. CES services have reviewed the current policy and have proposed changes in some areas. A revised CES Enforcement Policy (appendix 1) has been produced to reflect these changes.

The main change this year is the proposed inclusion of the Norfolk Fire and Rescue Service (NFRS) Enforcement Policy Statement. Although still reflecting national requirements, the proposal is for this to be appended to the main Policy, recognising that fire safety enforcement is now a function of the CES Directorate. The other changes proposed this year are highlighted in appendix 1, and summarised later in this report.

- 1. Recommendation: To approve the attached Enforcement Policy (appendix 1) and its annex documents, and to agree to the ongoing review of the Policy on an annual basis.**

Consumer Services Policy

The Consumer Services Policy was last reviewed in March 2015 to better reflect the Trading Standards Service provision, in light of the reorganisation implemented in January 2015. Since then some minor developments in service provision mean that there is a need to update and clarify the Policy. A revised Consumer Services Policy (appendix 2) has been produced to implement these changes - the changes are highlighted in appendix 2, and summarised in more detail later in this report.

- 2. Recommendation: To approve the attached Consumer Services Policy (appendix 2).**

1. Proposal

The current **Enforcement Policy** (the Policy) was first developed as a cross-departmental policy in 2013. The Policy covers a range of regulatory functions, including Trading Standards, Planning enforcement, Flood and Water and Highways. It does not try to capture all of the detailed, complex and often changing background to enforcement, but instead seeks to summarise the overall approach to the use of enforcement powers; whether that is criminal prosecution at one end of the spectrum or informal warnings and advice at the other. The policy is supported by detailed procedures for officers within each service area and, where necessary, additional protocols can be appended to the main policy. Currently there are two areas of work which appear as annex documents to the main policy; these relate to minerals and waste planning and flood and water management – see annex 1 and annex 2 to the Policy.

The main change this year is the proposed inclusion of the Norfolk Fire and Rescue Service (NFRS) Enforcement Policy Statement. Although still reflecting national requirements, the proposal is for this to be appended to the main Policy, recognising that fire safety enforcement is now a function of CES.

A revised CES Enforcement Policy (appendix 1) has been produced to reflect the proposed changes arising from this year's review. The main changes proposed this year are highlighted in appendix 1, and are summarised here as follows:

- Inclusion of the NFRS policy, as an appendix to the main policy (para 1.1 & annex 3)
- Clarification of the need to give notice for routine inspection visits unless unannounced visits are legally required/necessary (para 2.1.2)
- Confirmation of the support available for businesses via the Home and Primary Authority Principles as part of the Enforcement Policy, including the possibility of charging for interpretive or bespoke advice on a cost recovery basis (para 3)
- The inclusion of body worn video as part of investigations (para 4.6.4)
- Clarification that monetary penalties may be issued where there is a specific legal power or delegated authority to do so, with specific guidance produced for this as appropriate, with Single Use Carrier Bags a recent example (para 4.11)

The **Consumer Services Policy** was last reviewed in March 2015 to better reflect the Trading Standards Service provision, in light of the reorganisation implemented in January 2015. Since then some minor developments in service provision mean that there is a need to update and clarify the Policy. The changes are highlighted in appendix 2, and are summarised here as follows:

- Introduction of the Community Champions Scheme, working with other agencies and professionals in the community to help safeguard vulnerable people and provide intelligence about rogue trading
- Clarification of the range of professional services available from Citizens Advice, including advice for businesses
- Clarification on the way that Trading Standards receives and utilises the information it receives from Citizens Advice
- Introduction of a new dispute resolution service for Norfolk Trusted Trader, via the national Ombudsman Services Scheme.

2. Evidence

A CES wide Enforcement Policy is considered to be the most effective way to demonstrate how CES intends to fulfil its regulatory/legal responsibilities. An alternative option would be for each service area within CES to produce its own

enforcement policy. However as above there is a need for consistency in overall approach; and, where necessary or appropriate to do so, the draft policy also provides for additional (detailed) protocols.

No policy changes are proposed to the Consumer Services Policy, the amendments are minor and are simply to update service provision developments such as the Community Champions Scheme, and to clarify the way that Trading Standards works with Citizens Advice.

3. Financial Implications

There are no immediate resource implications as a result of this proposal although there is the recognition in the Enforcement policy that enforcement resources are not limitless and need to be targeted at areas where risk is highest. Higher performing, more compliant businesses will bear less of a burden, with regulators focusing their efforts on rogue and higher-risk businesses.

4. Issues, risks and innovation

There is a legal context to the deployment of enforcement powers. In 1998 the Cabinet Office published the “Enforcement Concordat” to help promote consistency in the UK regulatory enforcement regime. The Enforcement Concordat set out principles of good enforcement policy and, although a voluntary code of practice, it was adopted by 96% of all central and local government bodies, including Norfolk County Council.

The Enforcement Concordat has since been supplemented by a statutory code of practice, the Regulators’ Code (the Code). The Council has a legal obligation to have regard to the Code, including ensuring a consistent approach to enforcement policy and in setting out service standards.

In certain instances officers may conclude that a provision in the Code is either not relevant or is outweighed by another provision. Officers will ensure that any decision to depart from the Code is properly reasoned, based on material evidence and documented. The Code requires the Council to publish its Enforcement Policy.

The Council must also have regard to The Code for Crown Prosecutors (CPS) guidance which requires extensive consideration of the evidence (for example is it admissible, substantial and reliable) before a decision is made to institute legal proceedings; with any decision also considering whether it is in the public interest to prosecute. This CES Enforcement Policy provides a clear framework and mitigates any risk of legal challenge regarding the delivery of the regulatory enforcement function within the directorate.

Human Rights

In carrying out its enforcement role, the directorate has regard to the Freedom of Information Act 2000, the Data Protection Act 1998, Regulation of Investigatory Powers Act 2000 and the Human Rights Act 1998 (e.g. in the latter context the right to a fair trial, right to respect for private and family life, prohibition of discrimination and protection of property).

Equality Impact Assessment (EqIA)

An Equality Impact Assessment (EqIA) for the Enforcement Policy was carried out in late 2013, in conjunction with the Departmental Equality Lead Officer. Actions arising from the original EqIA were reviewed in 2014 and agreed as completed. This year’s review proposes no significant changes to the Policy which would require a new EqIA at this stage.

Although there is now a Directorate-wide Enforcement Policy, Trading Standards continues to undertake the vast majority of formal enforcement action

within the directorate. An Internal Audit of Trading Standards enforcement activity carried out in March 2016 found that the intelligence system in place is effective, that sound controls are in place and operating consistently, and the Service can demonstrate that decisions taken during investigations are equitable, unbiased and based on objective intelligence.

Equality impact assessments were also undertaken on the impact of the Putting People First budget consultation in 2014. The mitigating actions were:

- To ensure that all NCC communications (literature, website etc.) signpost effectively to the Citizens Advice consumer hotline and to associated self-help information provided via Citizens Advice and other agencies
- Work with Citizens Advice and others to ensure that self-help resources are continually improved and that tailored advice is targeted at disadvantaged groups, including older and disabled residents
- Monitor the impact of proposed service changes by increased analysis of intelligence through the new intelligence analyst post, so that further mitigating actions can be considered and resources can be targeted where there is most need

These actions have all been addressed, following on from the 2014 Service reorganisation, and in the continuation of this (revised) Consumer Services Policy.

Officer Contact

If you have any questions about matters contained in this paper or want to see copies of any assessments, e.g. equality impact assessment, please get in touch with:

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