

# Environment, Development and Transport Committee

<b>Report title:</b>	<b>Annual review of the Enforcement Policy</b>
<b>Date of meeting:</b>	<b>12 October 2018</b>
<b>Responsible Chief Officer:</b>	<b>Tom McCabe - Executive Director, Community and Environmental Services</b>
<b>Strategic impact</b> The Enforcement Policy provides 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

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), Norfolk Fire and Rescue (fire safety) and Highways (networks, maintenance and blue badge enforcement). Each area of work uses different legislation to secure its aims and each has its own framework of regulations, codes of practice and guidance.

The Policy, which is subject to annual review by members, has recently been reviewed and updated to reflect recent changes to legislation and guidance, and now includes a new enforcement protocol for Blue Badge Enforcement.

Trading Standards continues to carry out the majority of our enforcement activity, and this year we have been working closely with Suffolk County Council Trading Standards towards a common enforcement policy, including for cross border crime.

The revised policy has also been subject to a consultation process with key stakeholders, including representatives from local businesses and charities, those working in related enforcement fields and members of the public. Amendments have been made to the policy and Annex 4 in response to the feedback received.

A revised CES Enforcement Policy (appendix 1) has been produced with all the proposed changes highlighted in yellow, supported by explanatory notes.

The revised Policy, once adopted, will be published via the NCC web pages.

### Recommendation:

The EDT Committee is asked to:

**Confirm the revised CES Enforcement Policy and its annex documents meet the requirements of EDT Committee services, prior to final approval by the Policy & Resources committee who are the approval body for the policy.**

## 1. Proposal

- 1.1. 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 (mineral and waste sites), Flood and Water (land drainage), Norfolk Fire and Rescue (fire safety) and Highways (networks, maintenance and blue badge enforcement). It does not try

to capture all 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. There are now five areas of work which appear as annex documents to the main policy; these relate to minerals and waste planning, flood and water management, the Norfolk Fire and Rescue Service, Highways Enforcement and Blue Badge Enforcement - see annexes 1 – 5 to the main Policy.

- 1.2. The current Enforcement Policy has recently been reviewed by CES regulatory services, and updated to reflect recent changes to legislation and guidance. Work has also been undertaken by our Trading Standards team and colleagues in Suffolk County Council Trading Standards, to better align our respective Enforcement Policies, in order to deliver a common approach to enforcement, and improve collaboration in areas such as cross border crime.
- 1.3. The revised Policy continues to seek to ensure that the application of any enforcement is:
  - proportionate to the offence and risks, and mindful of previous transgressions
  - transparent - in that any person affected understands what is expected of them, what they should expect from the local authority and the reasons for the action
  - consistent with the Equality Act 2010 and the Council's Equalities Policies
  - consistent in approach, and appropriate.
- 1.4. This year the revised policy has also been subject to a consultation process with key stakeholders, including representatives from local businesses and charities, those working in related enforcement fields and members of the public. The consultation responses and the resultant amendments made are detailed in section 2 below.
- 1.5. All the proposed changes to the Policy (appendix 1) are highlighted in yellow, and supported by explanatory notes.
- 1.6. The revised Policy, once adopted, will be published via the NCC web pages.

## **2. Evidence**

- 2.1. 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 described in section 1.1 above there is need for consistency in overall approach. This draft policy does provide for additional (detailed) protocols where necessary or appropriate.
- 2.2. There were 22 respondents to the consultation, 15 of whom responded on behalf of local businesses. 77% of respondents agreed or strongly agreed with the Principles of Inspection and Enforcement and proposed use of Enforcement Actions. Only one respondent disagreed with the Principles of Inspection and Enforcement, and two (9%) disagreed with our proposed use of Enforcement Actions.
- 2.3. One member of the public commented that they found the Policy to be unnecessarily complicated and resource intensive, with too many options before legal action is even contemplated. Another respondent, who works in a related enforcement area, commented that local government should be more robust in

its enforcement, where it has appropriate powers, and considered that there are too many 'let's do nothing' options.

Conversely, a respondent on behalf of a community organisation considered the Policy seeks to change behaviour in the first instance and use the least action to achieve the best outcome and a business respondent considered the approach to be fair, pragmatic and thorough.

The Policy meets the requirements of the Regulators' Code in adopting a staged approach to enforcement, and the Code for Crown Prosecutors in respect of the need for legal action to meet the test for Public Interest. Therefore, we have not amended the draft Policy in light of these comments.

- 2.4. One respondent commented that, whilst they felt the complaints and appeals process to be clear, they had difficulty in finding a suitable telephone number as an alternative to using the email/online form provided. The County Council Compliments and Complaints Team has confirmed that the existing NCC process includes alternative access routes, and that NCC contact details are clearly displayed on each page of the NCC website. Accessibility adjustments are also available. However, we have decided to add the alternative access routes to the draft Policy itself for clarity, as a result of this feedback.

Another respondent commented that including the phrase in Section 5.1 'and will try and find a solution' implies that a complaint about the Service is valid. They go on to say that this may not be the case and this should be clear in the Policy to avoid unnecessary and costly complaint investigation. We have therefore amended the draft Policy to clarify this by amending the phrase to 'and will try and find a solution, if appropriate'.

- 2.5. One person, responding on behalf of a charity or community organisation, raised concerns about the enforcement of public rights of way, specifically that although mentioned in Annex 4, there is an absence of any detail around public rights of way, whereas detail is provided for other areas of enforcement. In most cases, the legal processes relating to Highways enforcement are well established, including those dealing with public rights of way issues under the Highways Act. We have provided more detail on enforcement processes for those areas where these are less well established, such as those relating to the enforcement of vehicles for sale on the highway. We have further amended Annex 4 for clarity, as a result of this feedback.

- 2.6. One person, responding on behalf of a business, commented 'I don't see anything in here about cybercrimes and what you are doing to enforce those who use technology for illegal purposes'. It is true that cybercrime is an increasing threat, and our Trading Standards Service, in its 2018-19 Service Plan sets out the following priorities:

- Protecting consumers and supporting legitimate businesses by tackling the most serious fraudulent, illegal and unfair trading, including e-crime
- Safeguarding vulnerable people by tackling rogue traders and scams

Put simply, cybercrime is crime committed online, usually involving misleading and/or fraudulent practices. As a result, cybercrime is considered seriously and will often result in immediate formal action for the most serious breaches, in line with paragraph 4.10 of the Enforcement Policy. In some cases, we will work with partners and internet providers/web hosting companies to arrange for the removal of a website where it is clear it is being used for illegal purposes. This has been added to the draft Policy as an example of an intervention we may take under Paragraph 4.21 of the Policy, as a result of this feedback.

### **3. Financial Implications**

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

### **4. Issues, risks and innovation**

- 4.1. There is a legal context to the deployment of enforcement powers. In 2014 the [Regulators' Code](#) (the Code) was published and seeks to provide a clear, flexible and principles-based framework for regulators to work to. It covers how we develop and implement items such as our service standards, policies and legal procedures, and sets out the type of information we must include in our Enforcement Policy. The Council has a legal obligation to have regard to the Code, including ensuring a consistent approach to enforcement. However, we are able to make changes to the Policy, if these would better explain or clarify the requirements arising from the Code.

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.

#### **4.2. Human Rights**

In carrying out its enforcement role, the directorate has regard to the Freedom of Information Act 2000, the Data Protection Act 2018, 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).

#### **4.3. Equality Impact Assessment (EqIA)**

No significant changes to the Policy are proposed which would require an Equality Impact Assessment, however the stakeholder consultation process also sought feedback from the CES Equalities team, who has suggested a clarification that the use of interpreters at paragraph 4.6 should apply to both language and British Sign Language. The draft Policy has been amended as a result of this feedback.

#### **4.4. Risks**

This policy provides a clear framework and mitigates any risk of legal challenge regarding the delivery of the regulatory enforcement function within CES.

#### **4.5. Health and Safety Implications**

There are no health and safety implications of which to take account.

#### **4.6. Environmental Implications**

There are no direct environmental implications to take into account as part of this

report. However, the Policy does provide for consideration of formal enforcement action where there is a significant risk to infrastructure or the environment. The Policy also includes a specific enforcement protocol for Flood and Water Management, and for planning controls.

#### 4.7. **Section 17 – Crime and Disorder Act**

CES, through its public protection and regulatory functions, has an important role to play dealing with crime and disorder. This Policy will support the directorate in protecting the public and the environment in a consistent, fair and transparent way, in line with both local and national priorities and legal requirements.

### 5. **Background**

- 5.1. CES regulatory activities are aimed at protecting the economic wellbeing and safety of Norfolk's residents and businesses and protecting the environment. How we carry out regulatory activities is key to supporting this aim.
- 5.2. Experience in regulatory enforcement shows that, in most cases, businesses and individuals comply with the law. Failure to do so generally stems from ignorance or carelessness, but sometimes from wilfulness or malice. A range of enforcement options is available to the Council but there is a need to discharge these in a consistent, fair and transparent way, as well as ensuring that the public or environment is adequately protected.
- 5.3. This Policy, once adopted, will be published via the NCC web pages.

### **Officer Contact**

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

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