

Cabinet

15 April 2015



Environment, Health & Consumer Protection Service- Enforcement Policy

Report of Corporate Management Team Terry Collins, Corporate Director for Neighbourhood Services Councillor Brian Stephens, Cabinet Portfolio Holder for Neighbourhoods and Local Partnerships

Purpose of the report

1. To seek agreement of a service specific enforcement policy that outlines the enforcement principles to be followed by authorised officers within Environment, Health and Consumer Protection Service (EHCP) when dealing with matters of regulatory non-compliance.

Background

2. ***The Legislative and Regulatory Reform Act 2006*** requires local authorities to have regard to the 'Principles of Good Regulation' when exercising specified regulatory functions, which are defined as those carried out by environmental health, trading standards and licensing services.

Accordingly we are expected to exercise our regulatory activities in a way which is:

- (i) ***Proportionate*** – reflecting the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
 - (ii) ***Accountable*** – open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
 - (iii) ***Consistent*** – advice to those we regulate will be robust and reliable and we will respect advice provided by others.
 - (iv) ***Transparent*** – ensuring that those we regulate are able to understand what is expected of them and what they can anticipate in return.
 - (v) ***Targeted*** – focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.
3. In February 2009, Council approved a Corporate Enforcement Policy to help promote efficient and effective approaches to regulatory inspection and enforcement, and improve regulatory outcomes, without imposing unnecessary burdens on individuals and businesses.

4. The introduction of a Corporate Enforcement Policy set out the standards and guidance that is applied by the Council when acting in its role as regulator and enforcement agency across the range of its relevant legal powers and duties.
5. Anyone undertaking an enforcement role of behalf of the Council in any capacity, must have regard to the Council's Corporate Enforcement Policy together with any additional requirements laid down by codes of conduct, legislation or other statutory provisions.
6. A letter from the Better Regulation Delivery Office was sent to all Local Authority Chief Executives in March 2014 outlining the Government's expectations in respect of the introduction of **The Regulators' Code**, which was introduced under the provisions of the Legislative and Regulatory Reform Act 2006, and came into force on 6th April 2014.
7. **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.
8. The Code applies to specified local authority regulatory functions including Environmental Health, Trading Standards and Licensing services. From the effective date the Council has a statutory duty to have regard to the Regulator's Code when developing policies, and operational procedures, that guide their regulatory activities.

Material Considerations

9. The requirement for regulators to publish service standards includes the provision of clear and transparent information on their **enforcement policy**, explaining how they will respond to issues of non-compliance. A draft enforcement policy for EHCP services in dealing with non-compliance is attached in Appendix 2.
10. The scope of the policy will only apply to EHCP services only and all officers will have regard to this policy, and any relevant policy or procedure made under it, when making enforcement decisions.
11. Any departure from this policy must be exceptional, capable of justification and be fully considered by the manager or head of service before a final decision is taken. This proviso shall not apply where a risk to safety or health is likely to occur due to a delay in any decision being made e.g. safeguarding, sexual exploitation and in cases of serious and /or organised crime investigations.
12. Before introducing or amending policies, practices or service standards, regulators should also consider the impact on business and consult with business representatives using appropriate mechanisms.
13. A public consultation exercise has been undertaken seeking comments and feedback on the final format and content of the policy prior to ratification by Council.

14. Information about the enforcement principles, the policy and consultation were published on the Council's website, with signposts to an online survey for responses.
15. As well as utilising a full range of communications mechanisms open to the council, postcards were designed and produced to signpost businesses to the online survey and representatives of EHCP carried out presentations to provide context on the proposed policy. All communications implemented aimed to raise awareness of the consultation and encourage participation.
16. 17 responses were received via the online survey and a summary of the results relating to the proposed policy are detailed in Appendix 3.
17. Upon consideration of the feedback from the public consultation exercise there are no material changes to the proposed enforcement policy as attached in Appendix 2.

Recommendations and Reasons

18. Cabinet consider and agree the final draft enforcement policy for EHCP services and recommend to Cabinet for adoption by the Council.

Background Papers:

- Department for Business, Innovation & Skills - Regulators Code- April 2014
- The Legislative and Regulatory Reform Act 2006
- The Legislative and Regulatory Reform (Regulatory Functions) Order 2007

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Appendix 1: Implications

Finance: None

Staffing: None

Risk: Adherence to the proposed enforcement policy for EHCP services will minimise the prospects of legal challenge in respect of enforcement decisions taken by authorised officers in the exercising of their regulatory duties.

Equality and Diversity / Public Sector Equality Duty

An Equality and diversity impact assessment screening has been completed and no adverse equality and diversity implications have been identified.

Accommodation

None

Crime and Disorder

Human Rights

None

Consultation: Public consultation was completed in January 2015 and feedback has been taken into consideration.

Procurement

None

Disability Issues

None

Legal Implications: The Regulators' Code aims to improve the way regulation is delivered at the front line. It sets out a clear framework for transparent and accountable regulatory delivery and establishes clear principles for how local authorities should interact with those they are regulating. The Code is underpinned by the statutory principles of good regulation, which provide that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.

Appendix 2- EHCP Enforcement Policy (draft)

Environment, Health and Consumer Protection Service Enforcement Policy

Introduction

1. This document is the enforcement policy for Durham County Councils Environment, Health and Consumer Protection Service. It sets out the key principles under which officers will seek to achieve compliance with the legislation enforced by these services.
2. It has been prepared having regard to [Section 21 of the Legislative and Regulatory Reform Act 2006](#) and to the [Regulators' Code](#) produced by the Better Regulation Delivery Office (BRDO).
3. The overall vision of the Environment, Health and Consumer Protection (EHCP) Service is to '*Protect and Improve the Health, Safety, Economic Wellbeing and Environment of the Community We Serve*'. We recognise that effective and well-targeted regulation is essential in achieving our vision.
4. In carrying out their duties officers will adhere to the principles of good enforcement set out in this document and in the [Regulators' Code](#) produced by the BRDO.

Scope

5. This policy is intended to apply only to regulatory activity carried out by the EHCP service.
6. Additional team specific policy and procedure documents issued under this policy will clearly set out the criteria to be met before enforcement action is taken.

Principles of enforcement

7. We will work to ensure compliance with the law by:
 - Targeting resources and regulatory activities during the service planning process only at cases which need it.
 - Helping and encouraging businesses and individuals to understand their responsibilities by providing the necessary advice and guidance to allow them to comply with the law, and
 - Responding proportionately and fairly to breaches of the law.

Planning regulatory activity and targeting resources

8. The EHCP service is committed to helping businesses grow. We will consider the impact that our regulatory activities may have on businesses and members of the public. We will only adopt a particular approach if the effectiveness and benefits of action taken justify the costs. In doing so will endeavour to help businesses achieve compliance without unnecessary expense.
9. We will allocate our resources where they will be most effective by assessing the risks associated with non-compliance with the law. In determining risk we will consider a range of factors that include:
 - The potential impact on residents, employees, consumers and business in failing to meet legal requirements.
 - The likelihood of non-compliance taking into account matters such as past history, the systems the business has in place, management competence and willingness to comply.
 - The age, gender and vulnerability of victims.
 - Any deliberate breaches or blatant disregard of the law
10. Planned inspections and other visits will be undertaken after consideration of the risk the business poses if it fails to comply. Reactive visits will be carried out upon request by a business, or where a service request, intelligence or information received suggests that an inspection or visit is appropriate.
11. Where practicable we will co-ordinate inspections or visits with other regulators to minimise the burden on recipients of our services. Random unplanned inspection or unannounced visits will only be undertaken where required by legislation or guidance.
12. Exceptionally, a small amount of random inspection may also be undertaken to test our risk assessments or the effectiveness of any action we have taken.
13. We will only ask for information that is necessary after considering the cost and benefit to obtaining the information. Where possible we will share this information with our partners (taking account of data protection) to prevent the need for providing the information more than once.
14. The service recognise our safeguarding responsibilities and will work with partners to tackle the more serious offending which cause significant community concerns. We are committed to tackling those involved in organised crime and will take the most serious action available if it is identified that offenders are part of an organised crime group or are targetting the most vulnerable members of our society in terms of both physical and mental abuse

Providing advice and guidance

15. We recognise that prevention is better than cure and will actively work with business and residents to provide advice on, and assist with, compliance with the law. In doing this we will ensure that:

- Advice on how to comply with the law is made available and communicated promptly upon request.
- The information we provide will be clear, concise and accessible
- Where practicable information will be provided in an appropriate language.
- Advice provided in writing where necessary.
- We will clearly distinguish between what is a legal requirement and what is guidance aimed at improvements above minimum legal standards.

Responding proportionately to breaches of the law

16. We recognise that most businesses and individuals wish to comply with the law, however firm action will be taken against those who flout the law or act irresponsibly.

17. We will carry out all of our enforcement duties, including taking formal enforcement action, in a fair, equitable and consistent manner. Whilst officers exercise judgement in individual cases, we will have arrangements in place to promote consistency including liaison with other agencies and authorities.

18. We recognise that prevention is better than cure, but where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so. There is a wide range of tools available to us as an enforcement agency. The actions we may take include:

- No action
- Informal Action and Advice
- Fixed Penalty Notices
- Penalty Charge Notices
- Formal Notice
- Forfeiture Proceedings
- Seizure of goods/equipment
- Injunctive Actions and other Civil Sanctions
- Refusal/Suspension/Revocation of a licence or permit
- Simple Caution
- Prosecution
- Proceeds of Crime Applications.

19. Where formal enforcement action is necessary, we will consider the most appropriate course of action from the range of sanctions and penalties available with the intention of:-

- Aiming to change the behaviour of the offender
- Aiming to eliminate any financial gain or benefit from non-compliance
- Being responsive and considering what is appropriate for the particular offender and issue involved, including punishment and the public stigma that may be associated with a criminal conviction.
- Being proportionate to the nature of the offence, and the potential to cause harm or harm caused
- Aiming to restore the harm caused by non-compliance
- Aiming to deter future non-compliance.

20. If the formal enforcement action being considered is a prosecution we will also consider a number of additional factors in line with the [Code for Crown Prosecutors](#) and any other nationally recognised guidance. These factors may include the following:

- The seriousness of the alleged offence
- The history of the party concerned
- The willingness of the business or the individual to prevent a recurrence of the problem and co-operate with officers
- Whether it is in the public interest to prosecute
- Whether any other action (including other means of formal enforcement action) would be more appropriate or effective

21. These factors are not exhaustive and are not listed in order of significance. The rating of the various factors will vary with each situation under consideration.

Application of our enforcement policy

22. All officers will have regard to this policy, and any relevant policy or procedure made under it, when making enforcement decisions.

23. Any departure from this policy must be exceptional, capable of justification and be fully considered by the manager or head of service before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made.

24. In cases of emergency or where any exceptional conditions prevail, the Head of Environment Health and Consumer Protection or Head of Legal Services may suspend any part of this policy where necessary to achieve effective running of the service and/ or where there is a risk of injury or to health of employees or any members of the public

Accountability

25. We will be accountable for the efficiency and effectiveness of our activities, while remaining independent in the decisions we take. In particular:

- We shall provide businesses and individuals with effective mechanisms for consultation and opportunities for feedback on our service.
- Where enforcement action is taken we will inform you of any relevant appeals procedure.
- Officers will be courteous, fair and efficient at all times, and will identify themselves by name and, where appropriate, identity card.
- Any complaints about the way you have been treated will follow Durham County Council's corporate complaints procedure, which is easily accessible to all service users, and explains how to make a complaint and the timescales involved. A copy of the complaints procedure can be obtained by calling 03000 261016 or via our website at www.durham.gov.uk

26. We will implement monitoring procedures to review compliance with this policy

27. We will publish our service standards, and report details of our performance against them, including feedback from those we regulate.

Review

28. This document will be subject to review as and when required. Improvements will be made if there are any changes in legislation or in local needs.

29. If you have any comments please contact the Head of Environment, Health and Consumer Protection by calling 03000 261016 or by writing to EHCP, PO Box 617, Durham, DH1 9HZ or email to ehcp@durham.gov.uk

Environment, Health and Consumer Protection (EHCP) Enforcement Policy Consultation Results - January 2015

- 7 respondents (70% of those who answered the question) agreed or strongly agreed that the approach to enforcement by the EHCP service is appropriate.
- 6 respondents (75% of those who answered the question) agreed or strongly agreed that the principles outlined in the proposed policy will lead to proportionate and fair decision making by EHCP officers.
- 6 respondents (75% of those who answered the question) had no experience of enforcement action by the EHCP service.
- 5 respondents (62.5% of those who answered the question) agreed or strongly agreed that they know enough about the statutory requirements that their business must comply with, without the need for intervention from the EHCP service.
- 47.1% responded to the survey as a business with 41.2% responding as an individual. 11.7% of respondents did not specify.
- Of those that specified, 60% of respondents were male and 40% of respondents were female.