

Cabinet

19 March 2009



Corporate Enforcement Policy

Key Decision ENV/LGR /20/08

Report of Terry Collins, Corporate Director, Neighbourhood Services

Cabinet Portfolio Member for Environment – Councillor Bob Young

1. PURPOSE OF THE REPORT

This report seeks Member's approval of the Council's 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.

2. INTRODUCTION

- 2.1 One of the main functions of the Council is to act as a regulator and an enforcement agency for a large range of legal duties and powers applied by Acts of Parliament, and various regulations and orders made under them (including various byelaws). The purpose of the policy is to make clear the approach of the Council in delivering its various enforcement roles.
- 2.2 Our role as a regulator is to protect, promote and improve the health and environment of the County and all of its people through education, guidance and enforcement and by supporting the Council's aims and objectives to ensure the continued success of Durham County Council.
- 2.3 Carrying out these enforcement activities in an equitable and consistent manner, promotes a sustainable local economy and maintains a safe and fair business and domestic environment.
- 2.4 The introduction of a Corporate Enforcement Policy will set out the standards and guidance that will be applied by the Council when acting in its role as regulator and enforcement agency across the range of its relevant legal powers and duties.

3. BACKGROUND

- 3.1 The Government introduced the Enforcement Concordat in 1998 in collaboration with business and local and national regulators. The aim is to promote good enforcement that brings benefits to business, enforcers and consumers.
- 3.2 Durham County Council is a signatory to the Enforcement Concordat and is committed to the principles of good enforcement. In doing so, the Council aims to be open, helpful and fair and will ensure that any enforcement action is proportionate to the risks to health and the environment.

3.3 The Principles of Good Enforcement:-

- Standards: setting clear standards.
- Openness: clear and open provision of information.
- Helpfulness: helping business by advising on and assisting with compliance.
- Complaints: having a clear complaints procedure.
- Proportionality: ensuring that enforcement action is proportionate to the risks involved.
- Consistency: ensuring consistent enforcement practice.

3.4 Hampton Review

3.4.1 Since the introduction of the Enforcement Concordat there has been significant progress made to improve approaches to regulatory inspection and enforcement. The Philip Hampton review, established by the Government in 2004, was influential in promoting the new approaches, which include:

- increased use of risk assessment to precede and inform all regulatory enforcement work,
- increased use of support and advice to help businesses to understand and meet regulatory requirements more easily, and,
- adopting proportionate, targeted and flexible approaches to applying the law and securing compliance.

3.4.2. The Regulator's Compliance Code which came into force in April 2008 was drafted in response to the Hampton Review and proposed the principles of 'better regulation' based on a risk-based approach and proportionality to regulatory enforcement.

Whilst there are many similarities between the Code and the Enforcement Concordat, the Regulator's Compliance Code is wider than the Enforcement Concordat in terms of the substantive provisions and currently only applies to certain regulatory functions including Environmental Health, Trading Standards, Licensing and Fire Safety Services.

As such, the Regulator's Compliance Code does not replace the Enforcement Concordat and regulators should therefore consider both sets of principles (where applicable), when determining policies, setting standards or giving guidance in relation to their duties.

3.4.3. In addition to 3.4.2 above, the introduction of the The Regulatory Enforcement and Sanctions Act (RES Act) 2008 is part of the Government's commitment to implementing the Hampton agenda.

The Act provides a framework of administrative sanctions that will allow regulators to tackle non compliance in ways that are transparent, flexible and proportionate to the offence. In addition it places a duty on specified regulators to:-

- review the burdens they impose
- reduce any that are unnecessary and unjustifiable
- report on their progress annually.

4. RELEVANT MATERIAL CONSIDERATIONS

4.1 Corporate Enforcement Policy

4.1.1. A draft 'Corporate Enforcement Policy' for Durham County Council is attached in Appendix 2 for consideration.

4.1.2. This document outlines the key principles of how the Council intends to carry out enforcement functions in an equitable, practical and consistent manner to protect the public, environment and groups such as consumers and workers.

4.1.3. It follows the principles of good enforcement contained within the Enforcement Concordat, and sets out a general approach to the use of a range of enforcement actions to ensure compliance and promote good practice.

4.2. Implementing the key principles of Good Enforcement

4.2.1. Proportionality

Costs to individuals, organisations and businesses in meeting their legal obligations will be minimised wherever possible by ensuring that any action we require is proportionate to the risks.

4.2.2. Consistency

Decisions to take enforcement action will follow a similar approach and will be taken in similar circumstances to achieve the objectives of this policy. However, it does not necessarily mean uniformity as each case will be considered on its individual merits. In addition, this Policy aims to achieve consistency in the advice given and in our response and decisions.

4.2.3. Transparency

Assistance will be offered to business and individuals to help them understand what is expected of them and what they should expect from the Council. Statutory requirements will be clearly distinguished from best practice advice or guidance.

4.2.4. Targeting

Enforcement action will generally be targeted at those situations which give rise to the most serious offences or greatest risks. Additional factors such as frequency of incidents, new legislation, national campaigns and public concerns will also be factors in determining enforcement priorities.

4.2.5. Accountability:

Officers are accountable to the public, Government and the Council for their actions and the Council has an effective mechanism for dealing with complaints and comments.

4.3. Scope of Policy

4.3.1. Anyone undertaking an enforcement role of behalf of the Council in any capacity, must have regard to the Enforcement Concordat together with any additional requirements laid down by codes of conduct, legislation or other statutory provisions.

All Officers will have regard to this policy when making enforcement decisions.

Where applicable they will also have regard to the requirements of the Regulators' Compliance Code and the provisions of the Regulatory Enforcement and Sanctions Act 2008.

- 4.3.2. Whilst the policy is intended to be reasonably comprehensive, it cannot cover every situation, especially where there are specific national or local codes or standards which have to be met for certain specific service areas.

Service specific policies and procedures may be required to ensure the correct procedures are followed in accordance with the law and relevant codes of practice, and will provide the detailed enforcement approach taken particularly in relation to the regulatory areas to which they refer.

Any service specific enforcement policies and procedures that exist should embrace the principles contained within this general policy and will be in accordance with the Enforcement Concordat.

- 4.3.3. In certain instances, we may conclude that a provision in the policy is either not relevant or is outweighed by another provision. Any departure from this policy however must be exceptional, capable of justification and be fully considered by the relevant Head of Service, before a final decision is taken.

This proviso shall not apply where a serious risk of injury to health or safety or to the environment is likely to occur as a result in a delay in any decision being made.

Any decision to depart from the policy will be properly reasoned, based on material evidence and documented.

- 4.3.4. This policy will not apply to actions of the Council in dealing with matters of contract including rents, tenancy agreements and leases. The Council will however endeavour to apply the same general principles as described in the policy wherever possible.

4.4. Authorisation of Officers

- 4.4.1. The authority in exercising their statutory duties under specific legislation must ensure that they appoint authorised Officers, who are suitably qualified, experienced and competent to carry out the duties for which they are authorised.
- 4.4.2. In accordance with the Council's Constitution, only duly appointed and authorised officers may undertake enforcement duties and where required by statute and government guidance, Officers will have the appropriate qualifications and relevant competences to undertake such duties.

4.5. Implementation, Monitoring and Review

- 4.5.1. Implementation of the Corporate Enforcement Policy will be monitored through regular audits of completed enforcement actions.
- 4.5.2. The policy will be reviewed on annual basis or when there are significant changes in legislation, government guidance or codes of practice.

5. Conclusion

- 5.1. The principles contained within this policy underpin the Council's approach to regulation which are proportionate in the application of statutory requirements and in securing compliance; ensure consistency of approach; transparency in how we operate and what can be expected from us and targeting of enforcement action.
- 5.2. Effective enforcement is an essential part of ensuring that the Council has the ability to maintain and enhance the local economy, protect health and the environment.

6. Recommendations

- 6.1. It is recommended that Members agree to adopt the Corporate Enforcement Policy which confirms the Council's commitment to good enforcement and better regulation and in particular;
 - ensures that we enforce the law in a fair, equitable, consistent and independent manner.
 - aims to assist businesses and others in meeting their legal obligations.
 - focuses on prevention rather than cure.
 - ensures firm action will be taken against those who knowingly breach the law or act irresponsibly.

Background documents:

Enforcement Concordat (www.berr.gov.uk)

Regulators' Compliance Code (www.berr.gov.uk)

Hampton Report (www.berr.gov.uk)

Code for Crown Prosecutors (www.cps.gov.uk)

Human Rights Act (www.opsi.gov.uk)

For further information on the details of this report, please contact:

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Appendix 1: Implications

Local Government Reorganisation

(Does the decision impact upon a future Unitary Council)

This is considered a 'must have' requirement for harmonisation of statutory processes before vesting day.

Finance

None

Legal

Inability to deliver statutory duties.

Legal challenge.

Failed enforcement action.

Increase in complaints and level of dissatisfaction with relevant services.

Staffing

None

Equality and Diversity

None

Accommodation

None

Crime and Disorder

None

Sustainability

None

Human Rights

None

Localities and Rurality

None

Young People

None

Consultation

Key stakeholders including public and local businesses

Health

None