

**Cabinet**

**Corporate Enforcement Policy**

**Cabinet 13 March 2024**

**Key decision NCC/2024/001**



## **Report of Corporate Management Team**

**Alan Patrickson, Corporate Director of Neighbourhoods and Climate Change**

**Councillor Mark Wilkes, Cabinet Portfolio Holder for Neighbourhoods and Climate Change**

### **Electoral division(s) affected:**

Countywide

### **Purpose of the Report**

- 1 To seek Cabinet approval to:
  - (a) Adopt the revised Corporate Enforcement Policy from 1 April 2024 following internal review and wider public and partner consultation.
  - (b) Grant delegated authority to relevant Corporate Directors in consultation with the Head of Legal and Democratic Services to review and amend the Corporate Enforcement Policy as appropriate as and when required in the future.

### **Executive summary**

- 2 The Policy outlines the enforcement principles to be followed by authorised officers when dealing with enforcing authority responsibilities and matters of regulatory non-compliance. It sets 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.
- 3 The Policy should be seen as a positive tool aimed at promoting efficient and effective approaches to regulatory inspection and enforcement. It will help improve regulatory outcomes without imposing unnecessary burdens on individuals and businesses.
- 4 The current Corporate Enforcement Policy has been reviewed and an open 6-week public consultation exercise was undertaken from 16 October to 24 November 2023 (including trade representative bodies). The final draft

policy, incorporating feedback from the consultation exercise, is provided as a separate document as Appendix 2. Appendix 3 provides a summary of summary of consultation responses received and action taken.

- 5 As part of the recommendations to Cabinet, delegated authority is sought for relevant Corporate Directors, in consultation with the Head of Legal and Democratic Services, to review and amend the Corporate Enforcement Policy as appropriate as and when required. Subject to Cabinet agreement, this delegated authority will be incorporated within the Council's Constitution at the next review.
- 6 Once agreed, the draft Policy is now ready to be formally adopted from 1 April 2024 along with any agreed delegated authority for future reviews.

## **Recommendations**

- 7 Cabinet is recommended to:
  - (a) Note the contents of this report and the final Corporate Enforcement Policy accompanying the report as Appendix 2;
  - (b) Agree to formally adopt the Corporate Enforcement Policy from 1 April 2024, subject to any further amendments; and
  - (c) Agree to delegate authority to relevant Corporate Directors in consultation with the Head of Legal and Democratic Services to review and amend the Corporate Enforcement Policy as appropriate as and when required.

## Background

- 8 The council carries out a wide range of regulatory roles in meeting its many statutory duties of protecting the public, individuals, and the environment. These functions are discharged through a combination of programmed inspections, responding to complaints, issuing licences, and offering advice.
- 9 This policy is an overarching policy that applies to all of the council's services with enforcement duties, but it should be noted that various additional service specific enforcement requirements may also apply.
- 10 The corporate enforcement policy is intended to protect the public, the environment, consumers, and workers through:
  - (a) Enforcing the law in a fair, equitable and consistent manner.
  - (b) Assisting broadly compliant businesses to meet their legal obligations.
  - (c) Taking firm action against those who flout the law or act irresponsibly.
- 11 The policy sets out the broad approach that the council will take to enforcement and sets out the levels of enforcement action available to the council, how we will determine which action is appropriate in the event of non-compliance and how we will conduct our investigations.
- 12 Anyone undertaking an enforcement role on 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.
- 13 ***The Legislative and Regulatory Reform Act 2006*** requires local authorities to have regard to the 'Principles of Good Regulation' when exercising specified regulatory functions.
- 14 Accordingly, the council is expected to exercise its 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.
- 15 The Regulators' Code came into statutory effect on 6 April 2014, replacing the Regulators' Compliance Code. It 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.
- 16 The Code applies to specified local authority regulatory functions and 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. Those services covered by the regulatory code include food safety, environmental protection, health and safety, private sector housing, public health, waste, and licensing.
- 17 The Regulator's Code is based on 6 broad principles which are set out below:
- (a) Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
  - (b) Regulators should provide straightforward ways to engage with those they regulate and hear their views.
  - (c) Regulators should base their regulatory activities on risk.
  - (d) Regulators should share information about compliance and risk.
  - (e) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
  - (f) Regulators should ensure that their approach to their regulatory activities is transparent. A key action required to ensure compliance with the Code is to have an enforcement policy explaining how the local authority responds to non-compliance.
- 18 It is also a requirement of the Code that mechanisms are put in place to engage with those they regulate including engagement in the development and review of policies and service standards.
- 19 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.
- 20 There are also a number of other regulatory and enforcement services which are not covered by the Code most notably Planning, Building Control, Revenues and Benefits and Parking Services enforcement. However, the draft revised Corporate Enforcement Policy is consistent with the Code and

the broad principles within the Policy are equally applicable to all council enforcement services and it is therefore recommended that this is adopted as a corporate approach to enforcement.

- 21 Where specific service operational procedures exist for regulation and enforcement activities these need to reflect the council's overall enforcement approach and all officers will have regard to the Corporate Enforcement policy and any procedures made under it, when making enforcement decisions.
- 22 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.
- 23 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.
- 24 An Equality and Diversity Impact Assessment screening has already been completed and no adverse equality and diversity implications have been identified.

## **Consultation**

- 25 The revised draft Corporate Enforcement Policy was prepared following an internal consultation exercise across all council services.
- 26 A wider public consultation exercise, including trade bodies and key partners, was undertaken from 16 October to 24 November 2023 through the Council's website. The final policy has been amended to incorporate minor relevant comments and is attached as Appendix 2 ahead of formal adoption by Cabinet. Appendix 3 provides a summary of summary of consultation responses received and action taken.
- 27 Once approved, the Corporate Enforcement Policy will be published on the Councils' website. Staff briefings will be developed to raise awareness and promote the principles within the corporate policy. Heads of Service will be required to have regard to the Policy when developing enforcement strategies and procedures and when making enforcement decisions relevant to their areas of regulation and enforcement.
- 28 As part of the recommendations to Cabinet, delegated authority is sought for relevant Corporate Directors, in consultation with the Head of Legal and Democratic Services, to review and amend the Corporate Enforcement Policy as and when required.

- 29 The Policy will be reviewed on a three-year cycle or earlier should legislative or statutory changes necessitate it.

## **Conclusion**

- 30 The principles contained within the revised policy underpin the Council's approach to regulation which:
- (a) Are proportionate in the application of statutory requirements,
  - (b) Secure compliance,
  - (c) Ensure consistency of approach,
  - (d) Offer transparency in how we operate and what can be expected from the Council, and
  - (e) Help target enforcement action appropriately.
- 31 Effective enforcement is an essential part of ensuring that the council can deliver its statutory duties and maintain and enhance the local economy, protect health and the environment.

## **Background papers**

Regulator's Code [Regulators' Code \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/publications/regulators-code)

## **Other useful documents**

None.

## **Authors:**

Joanne Waller

[joanne.waller@durham.gov.uk](mailto:joanne.waller@durham.gov.uk)

---

## **Appendix 1: Implications**

---

### **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.

Adherence to the Corporate Enforcement Policy will help promote the application of the 'Principles of Good Regulation' and deliver better regulatory outcomes and compliance with statutory guidance.

### **Finance**

None

### **Consultation**

Consultation with other Council services, partners, trade organisations and the general public was undertaken, and the outcomes of that consultation have been considered and the final policy reflects and incorporates any relevant comments made.

### **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.

### **Climate Change**

None

### **Human Rights**

This policy and all associated enforcement decisions will take account of the Human Rights Act 1998 in particular the right to a fair trial.

### **Crime and Disorder**

None

### **Staffing**

None

**Accommodation**

None.

**Risk**

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

**Procurement**

None.



---

**Appendix 2:** Draft Corporate Enforcement Policy

---

Attached as a separate document.

---

**Appendix 3:** Corporate Enforcement Policy – summary of consultation responses received, and action taken.

---

Attached as a separate document.