

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Anthony Casson, Portfolio Holder for Public Protection

To: Cabinet, 29 May 2018

Author: Sarah Shipley, Food Health and Safety Manager

Subject Corporate Enforcement Policy

Purpose: To seek approval of a revised Corporate Enforcement Policy

Recommendation:

- 1) That the revised Corporate Enforcement Policy be approved by Cabinet

1.0 BACKGROUND

- 1.1 The Council is responsible for enforcing a wide range of legislation, with powers of enforcement usually delegated to individual officers in the various service areas concerned. The decision to take (or not take) enforcement action is a serious one that may have implications for all involved and it is therefore important that there is a policy in place that ensures fairness, openness, and consistency.
- 1.2 Enforcement action can take different forms including:
 - Inspecting premises, processes, equipment or food
 - Investigating complaints about individuals and business
 - Providing advice about how to comply with the law
 - Taking action at Licensing Panels or undertaking Licensing Reviews
 - Issuing fixed penalty notices, statutory notices or taking prosecutions
- 1.3 South Holland Council last adopted a Regulatory Services Enforcement Policy in 2004. This policy was written in accordance with the Enforcement Concordat, which has since been superseded, first by the Regulators' Compliance Code, and more recently by the Regulators' Code.
- 1.4 Main Changes
 - 1.4.1 The Legislative and Regulatory Reform Act 2006 imposes a duty on anyone exercising a specified regulatory function to have regard to the principles of good regulation. The principles provide that regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.
 - 1.4.2 Under Section 23 of the Act, the Minister issued the Regulators' Code in 2014, which gives guidance on exercising regulatory functions. As a regulatory body, the Council is under a duty to have regard to the Code in exercising regulatory powers, setting standards or giving general advice.

1.4.3 The proposed policy, attached as an appendix to this report, creates one single, joint Corporate Enforcement Policy and brings it in-line with current requirements. The proposed Policy starts from the premise that most businesses and individuals want to comply with the law. Help and support will be provided to enable them to meet their legal obligations without unnecessary expenses, while firm action will be taken against those who flout the law or act irresponsibly. It seeks to assist officers in the decision making process, to ensure a consistent approach when using the range of enforcement tools available to them.

1.4.4 In revising this Policy, officers have considered how best to:

- Understand and minimise negative economic impacts of enforcement activities;
- Minimise the costs of compliance for those who are regulated;
- Improve confidence in compliance for those who are regulated; and
- Encourage and promote compliance with legislative requirements.

1.4.5 The intention of the draft Policy is to ensure that any enforcement action is compliant with the relevant legislation, codes of practice and government guidance. Also it must be transparent and accountable, proportionate, targeted, consistent in approach and appropriate.

1.4.6 The diversity of regulatory powers makes it difficult to encapsulate detailed processes in this policy. Often there are detailed and differing processes that need to be followed. For this reason, whilst the policy sets out principles that will be followed, more detail is contained in service specific policies which will form appendices to the Corporate Enforcement Policy.

1.4.7 The policy will apply to all Council services with enforcement functions:

Legal;
Place – Communities, Housing and Environmental Services;
Public Protection;
Planning and Building Control;
Finance and
Revenue and Benefits.

2.0 **OPTIONS**

2.1 Adopt the revised Corporate Enforcement Policy to guide all enforcement activities undertaken by all service areas with a regulatory responsibility.

2.2 Do nothing and retain the previous published Regulatory Services Enforcement Policy dated 2004, contrary to current regulatory requirements and statutory guidance.

3.0 **REASONS FOR RECOMMENDATION(S)**

3.1 To ensure legal compliance and to ensure that enforcement action taken by the Council is better able to resist a challenge in the courts.

4.0 **EXPECTED BENEFITS**

- 4.1 A revised Corporate Enforcement Policy will set out the standards that will be applied across the Council, when acting in its role as regulator and enforcement agency, and what residents, business and workers can expect from South Holland Council.
- 4.2 The adoption of a revised policy will ensure that officers undertaking regulatory work will do so in a consistent and transparent way, and in accordance with current legal requirements.
- 4.3 This will ensure a reduced risk of challenge in the courts and the potential loss of a case for failing to comply with correct procedure.

5.0 **IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 **Carbon Footprint / Environmental Issues**

- 5.1.1 This report has no carbon footprint or environmental implications

5.2 **Constitutional & Legal**

- 5.2.1 The Council is under a duty to have regard to the Regulators' Code when exercising its regulatory powers, setting standards or giving general advice.

5.3 **Contracts**

- 5.3.1 This report does not give rise to any contract implications.

5.4 **Corporate Priorities**

- 5.4.1 The proposals support the following Council priorities:
- To develop safer, stronger, healthier and more independent communities while protecting the most vulnerable;
 - To have pride in South Holland by supporting the district and residents to develop and thrive;
 - To provide the right services, at the right time and in the right way;
 - To encourage the local economy to be vibrant with continued growth.

5.5 **Crime and Disorder**

- 5.5.1 This report supports regulatory work undertaken by the Council.

5.6 **Equality and Diversity / Human Rights**

5.6.1 This report does not give rise to any equality and diversity, or human rights implications.

5.7 **Financial**

5.7.1 There are no financial implications arising from this report.

5.8 **Health & Wellbeing**

5.8.1 This report supports the regulatory work undertaken by the Council to promote health & wellbeing of residents, visitors and workers.

5.9 **Reputation**

5.9.1 The adoption of the Corporate Enforcement Policy will ensure that regulatory activities are undertaken in an open and transparent manner and in accordance with current statutory requirements, promoting a positive image of the Council.

5.10 **Risk Management**

5.10.1 The adoption of a Corporate Enforcement Policy that is followed by staff while undertaking regulatory activities should reduce the risk of the Council being open to legal challenge or judicial review if decisions are made based on incorrect procedure.

5.11 **Safeguarding**

5.11.1 This report does not give rise to any safeguarding implications

5.12 **Staffing**

5.12.1 This report does not give rise to any staffing implications, other than ensuring that those involved in regulatory activities are made aware of the new policy and procedures reviewed to ensure compliance.

5.13 **Stakeholders / Constitution / Timescales**

5.13.1 The draft Corporate Enforcement Policy has been developed in consultation with all service areas of the Council involved in regulatory work.

5.13.2 A copy of the draft Corporate Enforcement Policy has also be sent to key stakeholders and on the Council's website inviting comment.

5.14 **Transformation Programme**

5.14.1 This report does not give rise to any implications for the Transformation Programme.

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 All Wards and communities within South Holland.

7.0 **ACRONYMS**

7.1 All acronyms are clarified within the body of the report.

Background papers:- None

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Key Decision: Yes

Exempt Decision: No

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix A Corporate Enforcement Policy