

Wiltshire Council

Cabinet

24 May 2011

Subject: Public Protection Enforcement Policy

Cabinet member: Councillor Keith Humphries – Public Health and Wellbeing

Key Decision: Yes

Executive Summary

This report seeks Cabinet's approval and adoption of an enforcement policy for Public Protection Services.

The intention of the policy is to ensure that all enforcement action is compliant with all relevant legislation and guidelines and must be fair, clear, transparent, consistent, proportionate, risk based and robust. It relates to any enforcement actions taken by officers in Public Protection Services, and establishes a consistent approach regarding the use of both formal and informal mechanisms to achieve effective and efficient compliance with relevant legislation. This will assist local businesses contributing to supporting the economy as outlined in the council's business plan.

A draft policy was sent out for consultation between December 2010 and February 2011.

Proposal

That Cabinet approves and adopts the Public Protection Service Enforcement Policy.

Reason for Proposal

To ensure that any enforcement actions taken by Public Protection Officers are consistent, proportionate, fair and effective.

Maggie Rae
Corporate Director for Public Health and Wellbeing

Wiltshire Council

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Purpose of Report

- 1.0 This report seeks Cabinet's approval and adoption of an enforcement policy for Public Protection Services (Appendix 1).

Background

- 2.0 Before the establishment of Wiltshire Council an interim enforcement strategy was produced, which covered the former District Council environmental health functions together with the trading standards duties from the former County Council. This strategy was built upon the best practice from the former policies of all the constituent authorities, but was never formally adopted. During subsequent structure changes where community safety and emergency planning teams were added to the Public Protection Service, it was identified that a review of the strategy was required.
- 2.1 During recent enforcement action taken by the council challenges have been raised as to the status of the existing strategy, and that it has not been formally adopted. Having a robust policy rather than strategy approved by the authority will reduce the risk arising from such challenges, and provide a consistent framework for action.
- 2.2 Public Protection Services deals with a wide range of regulatory functions covering in the region of 140 primary Acts of Parliament (as listed in Appendix 2) together with numerous other regulations and orders. The legislation involved covers a wide range of issues, and seeks to protect consumers, residents and businesses as well as the environment. Investigations under these acts can result in both informal and formal actions being taken to ensure compliance with the law.
- 2.3 The policy addresses the practical application of Public Protection enforcement procedures (covering all environmental health and trading standards powers, as well as any relevant community safety and emergency planning laws), and aims to provide a fair and effective approach to any enforcement action taken by officers of the authority. It seeks that any enforcement action must be compliant with all relevant legislation and

guidelines, be fair, proportionate, clear and transparent to those involved, and be consistent and robust.

- 2.4 Enforcement in the context of this policy includes action carried out in the exercise of statutory enforcement powers and duties. It covers the inspection of premises, provision of advice and education and use of intelligence, as well as more formal enforcement action including fixed penalty notices, statutory notices and prosecution.
- 2.5 The policy covers all aspects of the service and seeks to assist officers in the decision making process when dealing with enforcement issues. It sets out a consistent approach on the use of all enforcement mechanisms or 'tools' at officers' disposal to achieve effective and efficient compliance with relevant legislation.
- 2.6 The policy contains appendices which detail the enforcement options, and prosecution guidelines which introduce a structured review of the merits or otherwise of a proposed enforcement action.
- 2.7 A draft enforcement policy went out to extensive consultation between December 2010 and February 2011. It sought views and comments from Area Boards, Chambers of Commerce, Business Link and other groups representing the local business community, and other interested parties. The consultation was also placed on the council's website. No comments were received on the draft document.

Main Considerations for the Council

- 3.0 The draft policy has been in use recently but has not been formally adopted.
- 3.1 The legacy authorities in Wiltshire all adopted the national Enforcement Concordat some years ago which established the principles of good enforcement, and set out what businesses and others being regulated are entitled to expect from enforcement officers. More recently there have been moves by central Government to both reduce the level of red tape and bureaucracy in local government regulation. This has resulted in the Government's Compliance Code: Statutory Code of Practice for Regulators.
- 3.2 This code requires the council to consider the impact of regulatory intervention on economic progress, including thorough consideration of the costs, effectiveness and perceptions of fairness of regulation. A particular approach will only be adopted if the benefits justify the costs and it entails minimum burden compatible with achieving objectives. It also encourages the prompt communication of general information, advice and guidance to make it easier for businesses to meet their regulatory obligations.
- 3.3 The policy ensures that the service meets the standards set out in the compliance code, and that any enforcement action is proportionate to the risk and seriousness of the breach of legislation, and that enforcement actions are reasonable and necessary.

Environmental and climate change considerations

- 4.0 There are no direct climate change implications in adopting the enforcement policy, and minimal environmental impact from adoption of the policy itself. However successful application of the policy will assist in delivering efficient regulation which may reduce environmental damage, and ensure that resources are targeted where there is most significant environmental harm.

Equalities Impact of the Proposal

- 5.0 A screening for the equalities impact assessment has been carried out on the effect of the policy. The policy has low relevance in relation to its impact on the areas under the statutory duties contained in the equalities impact assessment template, but contributes towards the corporate goal of local, open and transparent decision making.

Risk Assessment

- 6.0 The enforcement policy is based on a risk based approach to ensuring compliance with the variety of legislation which is administered by Public Protection Services.
- 6.1 The risk of not adopting the policy is that the council will be vulnerable to legal challenges and the resulting financial penalties. This may result in criticism of the council and damage its reputation.

Financial Implications

- 7.0 Pursuit of enforcement action is a labour intensive activity and the council can incur significant costs in defending appeals and taking court action or carrying out works in default. In addition aggrieved defendants can seek to recover their own costs from the Council where it has been determined that it has acted unreasonably.
- 7.1 Adoption of the policy will provide the council with a platform for efficient and effective use of resources, and a stronger basis on which to resist claims for costs where it has followed its own practices and procedures. Failure to adopt the policy could result in legal challenges to the Council with both potential costs and financial penalties being imposed as described in paragraph 6.1 above.

Legal Implications

- 8.0 Legal Services have been involved in the development of the enforcement policy. The adoption of the policy will improve the council's ability to withstand legal challenges when pursuing formal enforcement action, by ensuring that any actions taken are legally correct, proportionate and risk based.

- 8.1. The policy itself requires adherence to best professional practice and compliance with other legislation including the Humans Rights Act 1998 and the Criminal Procedure and Investigations Act 1996.

Options considered

- 9.0 The option of not adopting the policy is not favoured for the reasons set out in this report, particularly in section six above.

Conclusions

- 10.0 The adoption of single new policy will improve the transparency of any enforcement actions taken by the service, and ensure that all actions will be compliant with all relevant legislation, and are fair, clear, transparent, consistent, proportionate, risk based and robust.

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Background Papers

The following unpublished documents have been relied on in the preparation of this report: None

Appendices

Appendix 1 - Public Protection Enforcement Policy
Appendix 1a - Public Protection Enforcement Policy - Formal Enforcement Options Guidelines
Appendix 1b - Public Protection Enforcement Policy - Prosecution Guidelines
Appendix 2 - List of Public Protection primary legislation
