

Wiltshire Council

Cabinet

Date of meeting

Subject: Minor amendments to the Public Protection Enforcement Policy

Cabinet member: Councillor Keith Humphries – Public Health and Wellbeing

Key Decision: No

Purpose of Report

1. To agree some minor amendments to the Public Protection Enforcement Policy to ensure compliance with revised guidance issued by the Government's Better Regulation Delivery Office (BRDO).

Background

2. The Public Protection Enforcement Policy was originally approved by Cabinet on 24 May 2011. Revised statutory guidance, the Regulators' Code, has been issued under the Legislative and Regulatory Reform Act 2006, and applies to a wide range of public bodies which have a regulatory role including local authorities. The new code has to form part of the council's Public Protection Enforcement Policy, and so some minor amendments are required to the existing policy to refer to the Regulators' Code.
 - 2.1 The intention of the enforcement 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.

Main Considerations for the Council

3. The Regulators' Code requires the council to consider the impact of regulatory intervention on economic progress, including a thorough consideration of the costs, effectiveness and perceptions of fairness of regulation. A particular enforcement 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.

- 3.1 The enforcement policy ensures the service meets the standards set out in the Regulators' 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.

Safeguarding Considerations

4. The enforcement policy relates to all enforcement actions taken by the Public Protection Service. Where these actions have the potential to involve young people and vulnerable adults the test of proportionality is relevant. In such cases the service will liaise with other services to ensure an appropriate multi agency response is taken.

Public Health Implications

5. The enforcement policy supports the judicious use of statutory powers to ensure that residents and businesses comply with legal requirements. As well as protecting economic wellbeing this has the potential to safeguard health and wellbeing of individuals and populations in specific cases.

Environmental and Climate Change Considerations

6. There are no direct climate change implications in revising the enforcement policy, or environmental impact from the policy itself. However successful application of the policy assists 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

7. 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

8. The enforcement policy ensures a risk based approach to ensuring compliance with the wide variety of legislation administered by Public Protection Services.

Risks that may arise if the proposed decision and related work is not taken

9. The risk of not adopting the revised 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

10. 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.

- 10.1 The revised policy provides 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 revise the policy could result in legal challenges to the Council with both potential costs and financial penalties being imposed as described in section 9 above.

Legal Implications

11. Legal Services were involved in the development of the original enforcement policy. The amendments to 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.
- 11.1 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

12. The option of not adopting the policy is not favoured for the reasons set out in this report, particularly in section 9 above.

Conclusions

13. The amendments to the enforcement policy will ensure that all actions will be compliant with all relevant legislation, and are fair, clear, transparent, consistent, proportionate, risk based and robust.

***Proposal**

14. To agree the minor amendments to the Public Protection enforcement policy.

***Reason for Proposal**

15. To comply with the Legislative and Regulatory Reform Act 2006, replacing the Regulators' Compliance Code which will provide a clear, flexible and risk based framework for how regulators across a wide range of public bodies should engage with those they regulate.

Maggie Rae
Corporate Director
