

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting: 12th July 2016
Report of: Steph Cordon – Head of Communities
Subject/Title: Cheshire East Council Enforcement Policy
Portfolio Holder: Councillor Paul Bates – Communities and Health

1. Report Summary

- 1.1. The current Cheshire East Enforcement Policy was approved by Cabinet in March 2009 and was consistent with the Enforcement Concordat as published in 1998. The revised Cheshire East Enforcement Policy (Appendix 1) has been developed to incorporate the principles of the new Code and will apply to all regulatory areas covered by the Council.
- 1.2. Cheshire East Council is committed to be a proactive and enforcing council. This has been communicated most recently as an Outcome Theme definition within the Medium Term Financial Strategy Summary 2016/2019; Outcome 1 - Our local communities are strong and supportive.
- 1.3. The report seeks to provide an overview of the development of the revised Cheshire East Enforcement Policy and those factors which have been considered during its development, and to provide details of the overarching policy and the supporting service specific appendices.

2. Recommendations

- 2.1. That Cabinet Members approve the overarching Cheshire East Enforcement Policy (Appendix 1).
- 2.2. That Cabinet Members notes the service specific appendices which provide additional detail on actions and sanctions available to individual services. (Appendices 2-8).
- 2.3. That Cabinet delegates authority to the Portfolio Holder for Communities and Health in consultation with the Head of Communities to update any service specific policy as required.

3. Other Options Considered

- 3.1. There is the option to continue to carry out enforcement activity in line with the Cheshire East Enforcement Policy published in 2009. However as this policy is now six years old and does not address the requirements of the

Regulators Code produced in 2014. This would therefore leave the authority open to potential criticism and challenge in relation to enforcement activity.

4. Reasons for Recommendations

- 4.1. There is a statutory requirement for Cheshire East Council to have an appropriate Enforcement Policy in respect of the regulatory services that it provides.
- 4.2. A number of sanctions are available across the range of enforcement services however in some cases sanctions are limited to a specific service area. The service specific policies are therefore aimed at providing clarity on enforcement options to those who are the subject of enforcement action.
- 4.3. The constant changes to legislation and the creation of new and additional sanctions requires an expedient update and approval process to ensure that services can take advantage of new sanctions when they become available.

5. Background/Chronology

- 5.1. As part of the government's commitment to reducing regulatory burdens and supporting business growth, the Regulators Code (the Code) was developed and came into statutory effect on 6 April 2014. The Code was made under the Legislative and Regulatory Reform Act 2006 and provides clear principles on how local authorities should interact with those that they are regulating in order to encourage open and constructive relationships.
- 5.2. The Code is underpinned by the principles of good regulation which states that regulatory activity should be carried out in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which access is needed. It is a statutory requirement that regulators must have regard to the Code when developing policies and procedures that guide their regulatory activities.
- 5.3. The key principles of the Code are that regulators should:
 - Carry out their activities in a way that supports those they regulate to comply and grow;
 - Provide simple and straightforward ways to engage with those they regulate;
 - Base their regulatory activities on risk;
 - Share information about compliance and risk;
 - Ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply; and
 - Ensure their approach to their regulatory activities is transparent.

- 5.4. The current Cheshire East Enforcement Policy was approved by Cabinet in March 2009 and was consistent with the Enforcement Concordat as published in 1998. The revised Cheshire East Enforcement Policy (Appendix 1) has been developed to incorporate the principles of the new Code and will apply to all regulatory areas covered by the council including; Environmental Health, Trading Standards, Planning Enforcement, Building Control, Licensing, Housing, Antisocial Behaviour, Waste & Littering, Parking, the Blue Badge Scheme and Public Rights of Way.
- 5.5. The revised Enforcement Policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by relevant services. It is designed to help businesses and individuals understand our objectives and methods for achieving compliance as well as the criteria we consider when deciding the most appropriate response to a breach of legislation.
- 5.6. The revised Enforcement Policy has been restructured to take into account the wide range of regulatory functions undertaken by the Council and with that the wide variety of sanctions available. As not every sanction is available to every regulatory team it was considered important to make these distinctions clear and to avoid confusion and ambiguity.
- 5.7. As a result the revised Enforcement Policy is comprised of an overarching policy of enforcement which is supplemented by appendices produced by the individual service areas that have a regulatory role (Appendices 2-8). This arrangement therefore allows for the clearer detail on supplementary Statutory Guidance and Codes of Practice that may be specific to individual service areas and which must be considered as part of their regulatory effort.
- 5.8. This service specific approach allows for the easier update of any changes to the enforcement approach or policy that impacts upon single services i.e. the update/amendment or suspension of specific sanctions, changes to Statutory Guidance etc. There is a recommendation that this can also be the subject of timely update and approval by the relevant Head of Service.
- 5.9. It is important that the Enforcement Policy is communicated to all those that it affects. Once approved the Cheshire East Enforcement Policy and supporting Appendices will be published on the Cheshire East website.
- 5.10. Officers involved in regulatory activity will also use their face to face activity and written contact with individuals and business to draw attention to and promote the Enforcement Policy.
- 5.11. In accordance with The Regulators Code details of fees and charges associated with regulatory activity are already published on the Councils website and regularly updated.
- 5.12. In addition, the Council is required to publish details of performance against the policy including feedback from satisfaction surveys and data relating to complaints about them and appeals against their decisions.

- 5.13. It is proposed that the Cheshire East Enforcement Policy will be reviewed every 3 years as a minimum. Updates will also be considered in response to feedback by individuals and businesses or as a result of legislative changes.

6. Wards Affected and Local Ward Members

- 6.1. All ward and all ward members.

7. Implications of Recommendation

7.1. Policy Implications

- 7.1.1. To support the Council's ambition to be an Enforcing Authority that is tough on residents and businesses that are selfish and cause harm to others.

7.2. Legal Implications

- 7.2.1. The objective of the enforcement policy is to support the underlying mechanisms for enforcement set out in Legislation and a formal policy is required to ensure that our principles and approach to enforcement are clear and transparent.
- 7.2.2. A policy provides that there will be a consistent approach across the Council that all Officers must follow and ensure that non-compliance with legislation is dealt with fairly and proportionately.
- 7.2.3. The existence of a policy provides the public with clear guidance as to how matters will be approached and may allow for opportunity to discuss matters thus avoiding the need for formal enforcement action to be taken.
- 7.2.4. Whilst certain enforcement action would not be deemed to be unlawful without the existence of a formal policy, other enforcement legislation is prescriptive in its expectations of the Council and its policies.
- 7.2.5. Failure to adopt an Enforcement Policy may leave the Council open to legal challenge and place the Council at risk of reputational damage.

7.3. Financial Implications

- 7.3.1. Implementing this enforcement policy would incur staff time but no other additional costs. The staffing costs are already covered by base budgets within the relevant service areas.

7.4. Equality Implications

7.4.1. The Cheshire East Enforcement Policy aims to outline a transparent and consistent approach to enforcement across Cheshire East. As a consequence there are no equality implications resulting from its adoption and application.

7.5. Rural Community Implications

7.5.1. There are no specific implications to the rural community as a result of the adoption of the Cheshire East Enforcement Policy.

7.6. Human Resources Implications

7.6.1. Those services which undertake enforcement activity have an ongoing commitment to ensuring that officers engaged in enforcement are suitably trained and supported. There are therefore no additional implications arising from the adoption of this Policy.

7.7. Public Health Implications

7.7.1. There are a number of facets of enforcement activity which are directly aimed at protecting public health and these will continue in line with the revised Enforcement Policy. There are no additional implications.

7.8. Other Implications (Please Specify)

7.8.1. There are no other additional implications to consider.

8. Risk Management

8.1. Failure to adopt the Code and Enforcement policy can increase the risk of legal challenge and adverse scrutiny. Care has been taken to ensure that the Council is not unduly constrained in taking the appropriate regulatory action. If a policy is too restrictive then this could be detrimental to fair and effective regulation; conversely there is a need to provide detail to allow individuals and businesses to understand what they might expect as a result of non compliance.

8.2. There is a reputational risk to Council by not having a transparent and robust approach to enforcement.

8.3. Once adopted failure to comply with one's own Enforcement Policy is open to legal challenge as an abuse of process.

9. Access to Information/Bibliography

- 9.1. A copy of the Regulators Code of Compliance can be accessed via the following hyperlink:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

- 9.2. Further information in relation to the report and its contents can be accessed by contacting the report author.

10. Contact Information

Contact details for this report are as follows:

Name: Tracey Bettaney

Designation: Principal Manager – Regulatory Service and Health

Tel. No: 01270 686596

Email: tracey.bettaney@cheshireeast.gov.uk