

Environment and Communities

Date of Meeting:	10 November 2022
Report Title:	Corporate Enforcement Policy Review
Report of:	Jayne Traverse, Executive Director - Place
Report Reference No:	EC/13/22-23
Ward(s) Affected:	All

1. Purpose of Report

- 1.1. The purpose of this report is to seek approval of the updated Corporate Enforcement Policy. Following approval, the Policy will be published on the Cheshire East website and implemented by the various enforcement teams within the Council either as a stand-alone document or in conjunction with a relevant Service Specific Policy.
- 1.2. This approach accords with the Councils 2021-2025 Corporate Plan contributing to our strategic aim to *provide strong community leadership and work transparently with our residents, businesses, and partners to deliver our ambition in Cheshire East*. In addition, it supports our objective to *ensure that there is transparency in all aspects of council decision making*.

2. Executive Summary

- 2.1 The Cheshire East Corporate Enforcement Policy was last updated and approved in October 2019. The 2019 Policy included a commitment for review within a three-year period which is now due.
- 2.2 This report seeks approval for an updated version of the Policy. A review has been undertaken to include consultation with all enforcement services across the Council.
- 2.3 Appendix 1 of the report presents the proposed 2022 Corporate Enforcement Policy developed as a result of consultation with enforcement teams across the Council.

2.4 Appendix 2 provides an overview of the changes that have been made to the existing 2019 Policy. Although the majority of these are minor changes and predominantly improve wording or provide further clarity the Policy does now include more specific information in relation to Fixed Penalty Notices. Section 7.4.9 now includes specific details on our approach to the issue of FPN's to those between the age of 10-17 (minors).

3. Recommendations

3.1. That Environment and Communities Committee approves the updated Cheshire East Council Corporate Enforcement Policy contained as Appendix 1 to this report.

4. Reasons for Recommendations

4.1. There is a statutory requirement for Cheshire East Council to have an Enforcement Policy in respect of the regulatory services that it provides to residents and businesses.

4.2. The recommendations for approval a revised Corporate Enforcement Policy underpin the Councils strategic aims and objectives within the Corporate Plan 2021-2025 for a clear and integrated enforcement approach.

4.3. The recommendations also demonstrate our commitment to ensure that the Policy is reflective of our current enforcement priorities and our approach to enforcement activities.

5. Other Options Considered

5.1. No other options have been considered. The 2019 Corporate Enforcement Policy committed to a Policy review within a three-year period. The 2022 review process has included engagement with all enforcement teams across the Council and meets the needs of the review and update requirement.

Option	Impact	Risk
Do nothing – continue to operate to the 2019 Corporate Enforcement Policy	The Council would not fulfil its own requirement to review the Corporate Enforcement Policy within a 3-year period.	That the Council could leave itself open to challenge on the basis that the Policy is outdated and has not been subject to regular review or does not reflect all available enforcement options.

6. Background

- 6.1.** The government is committed to ensuring that regulation is not unduly burdensome to business and has provided clear principles on how local authorities should interact with those that they are regulating to encourage open and constructive relationships.
- 6.2.** These principles are laid down in the Regulators Code (the Code) which came into statutory effect on 6 April 2014.
- 6.3.** 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 activity is transparent.
- 6.4.** Since the publication of the Code, successive Cheshire East Corporate Enforcement Policies have considered all existing guidance on enforcement available at the time to ensure that our activity is reflective of national requirements.
- 6.5.** This work has also led to the production of Service Specific Enforcement Policies which sit under the Corporate Policy and provide even greater clarity on our local enforcement approach. This has helped to remove ambiguity created by general guidance and therefore minimise unnecessary challenge.
- 6.6.** The 2019 Corporate Enforcement Policy committed to a review of the Policy on a three-year basis, a process which is now due.
- 6.7.** This review has been completed in consultation with all enforcement teams across the Council through the wider Enforcement Group that exists to discuss regulatory matters, share knowledge and improve consistency. This includes representatives from Environmental Health, Trading Standards & CCTV, Planning Enforcement, Building Control, Licensing, Housing, Antisocial Behaviour & Community Enforcement, Parking, Blue Badge, Public Rights of Way, Countryside and Highways.
- 6.8.** A review of legislation and guidance relating to enforcement activity has identified that these remain current with no updates required.
- 6.9.** In relation to enforcement options, the same overarching measures exist as within the 2019 Policy. It is the Service Specific Policies which provide more

granular detail on which measures are applicable to that service area based upon the legislation available to those undertaking enforcement.

- 6.10.** The most significant change to the Policy has been the inclusion of greater clarity around the issue of Fixed Penalty Notices (FPN) to minors i.e., those between 10-17 years old. The previous policy advised that the Council would comply with any current and relevant guidance when considering whether it was appropriate to issue an FPN in these circumstances. However, over time, guidance in this area has expanded to offer differing approaches, all of which have their merits, but which introduce opportunities for challenge to the actual approach taken. It has been necessary therefore to provide more specific detail on the approach that will be taken by Cheshire East.
- 6.11.** Paragraph 7.4.9 now outlines the Council's intended approach to the issue of FPN's to minors and relevant considerations when deciding whether an FPN is the most appropriate method, or an alternative sanction may be more suitable.
- 6.12.** Throughout the document there have also been a number of minor changes aimed at improving wording and increasing clarity.
- 6.13.** Appendix 1 provides the proposed updated 2022 Corporate Enforcement Policy.
- 6.14.** For ease, Appendix 2 provides a table of changes to the original 2019 Policy.

7. Implications

7.1. Legal

- 7.1.1.** The objective of any enforcement policy is to support the underlying mechanism 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.
- 7.1.2.** The Corporate Policy provides for a consistent overarching enforcement approach across the Council supplemented by Service Specific Policies as appropriate. Officers will have regard to the Policy when dealing with issues of legislative non-compliance to ensure that matters are dealt with fairly and proportionately.
- 7.1.3.** The existence of a Policy provides the public and business operators with clear guidance as to how we approach enforcement matters and can provide the opportunity for constructive engagement prior to any enforcement action being taken.
- 7.1.4.** Whilst certain enforcement action would not be deemed unlawful without the existence of a formal policy, other enforcement legislation is prescriptive in its expectations of the Council and its policies.

7.1.5. Failure to adopt an Enforcement Policy may leave the Council open to legal challenge and place the Council at risk of reputational damage.

7.2. Finance

7.2.1. Implementing this Policy will incur staff costs that are already covered by base budgets within the relevant service areas.

7.2.2. Some enforcement activities incur a charge designed to solely recover the cost of the enforcement action taken and are recoverable from those subject to the enforcement activity. Some charges are set by statute whilst others are determined by the Council and must demonstrate financial transparency in how they are evaluated.

7.2.3. It is not possible to recover all costs associated with enforcement activity and in these circumstances, there will be pressure on existing service budgets if these additional costs cannot be absorbed.

7.3. Policy

7.3.1 The Council's Corporate Plan 2021-2025 sets out our vision for a more open, fairer, greener Cheshire East. The Plan includes the aim of a thriving and sustainable place, with a priority of welcoming, safe and clean neighbourhoods. In some circumstances it will be necessary to engage in enforcement activities to achieve this vision.

7.3.2 This policy will therefore ensure that there is transparency in our decision-making processes around enforcement and where we seek compliance with legislation to achieve our strategic aims and objectives.

7.4. Equality

7.4.1. The Corporate Enforcement Policy aims to outline a transparent and consistent approach to enforcement across Cheshire East. Therefore, there are no equality implications resulting from its adoption and implementation.

7.4.2. Reference has been made within the Policy of our aims and objectives in relation to Equality, Diversity and Inclusion including links to relevant documents.

7.5. Human Resources

7.5.1. Those services that undertake enforcement activity have an ongoing commitment to ensuring that all officers engaged in enforcement activities are suitably trained and supported. This is dealt with through the formal appraisal process and the identification of specific training with the service training plan.

7.6. Risk Management

7.6.1. Failure to adopt the Regulators Code and Enforcement Policy can increase the risk of legal challenge and adverse scrutiny. Care has been taken to

ensure that the Policy strikes a balance between enabling individuals and businesses to understand our enforcement approach but without constraining our enforcement options. If a policy is too restrictive then this could be detrimental to fair and effective regulation.

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

7.6.3. Once adopted, failure to comply with one's own Enforcement Policy could be open to legal challenge as an abuse of process.

7.7. Rural Communities

7.7.1. There are no implications for rural communities.

7.8. Children and Young People/Cared for Children

7.8.1. The updated Corporate Enforcement Policy now provides specific information on our approach to the issue of Fixed Penalty Notices to juveniles (those aged 10-17). This approach is based on general guidance issued by Defra that has been tailored to address the needs of Cheshire East Council and considers consultation comments provided by the Youth Justice Service as part of the policy review.

7.8.2. The issue of FPN's to juveniles is not without due consideration and the Policy identifies those matters that may be taken into account during this process and where it will be appropriate to liaise with external agencies such as Youth Justice Services or the relevant Early Help and Children's Services.

7.9. Public Health

7.9.1. There are no implications for public health although regulatory activity covered by this Policy may have a direct or indirect positive impact upon public health.

7.10. Climate Change

7.10.1. The Council has committed to becoming Carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint. There are no implications for climate change although regulatory activity covered by this policy may have a positive impact upon the carbon emissions.

Access to Information	
Contact Officer:	Tracey Bettaney, Head of Regulatory Services tracey.bettaney@cheshireeast.gov.uk 07814 369267
Appendices:	Appendix 1 Corporate Enforcement Policy 2022 Appendix 2 Summary of changes

Background Papers:	Cheshire East Enforcement Policy October 2019
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