

**TO: ENVIRONMENT, CULTURE & COMMUNITIES OVERVIEW & SCRUTINY PANEL  
24 APRIL 2012**

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**ENFORCEMENT POLICY  
Chief Officer: Environment & Public Protection**

**1 PURPOSE OF REPORT**

- 1.1 The nature of the Environment & Public Protection Division's work is such that it must have in place an Enforcement Policy that sets out the procedure that will be adopted when seeking regulatory compliance.
- 1.2 The provisions of the Regulatory Enforcement and Sanctions Act 2008 and the Regulators' Compliance Code which is statutory guidance applies to Trading Standards, Environmental Health and Licensing. The Council is also a signatory to an earlier voluntary enforcement concordat. The Enforcement Policy is also applied to other services within the Division so as to ensure consistency and transparency in decision making and enforcement.
- 1.3 Our current Enforcement Policy was adopted by the Executive in November 2008 but it now requires updating. A revised Enforcement Policy is attached as Annex A to this report. The Policy is brought to this Panel as part of the consultation process. The Policy is scheduled for the Executive meeting on 12 June 2012.

**2 RECOMMENDATION**

- 2.1 **That the Panel considers and comments upon the content of the draft Enforcement Policy as set out in Annex A.**

**3 REASONS FOR RECOMMENDATION**

- 3.1 The Policy has been reviewed by officers in light of changes to the legislative framework in recent times. The views and comments of members of this Panel are sought on the proposed Policy prior to submission to the Executive and formal adoption.

**4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 None.

**5 SUPPORTING INFORMATION**

- 5.1 The current Policy was adopted in November 2008. With the introduction of new legislation and guidance the existing policy has been reviewed and redrafted to reflect those changes. The overriding principles within the former document remain unchanged.
- 5.2 The Policy will go to the Executive prior to adoption and as part of the process it is considered appropriate to give members from this Panel the opportunity to comment.

## Unrestricted

- 5.3 The purpose of such a Policy is to set in a transparent manner for the benefit of businesses, consumers and victims, the framework for decision-making when evidence of non-compliance with legislative provisions is found. The Policy lays down the principles that will be applied and the matters that will be taken into consideration when dealing with any enforcement matter.
- 5.4 It should be noted that when formal action such as a prosecution is taken it is not uncommon for a defendant to have regard to the Policy when formulating any defence. They will look to satisfy themselves that firstly there was a decision-making process in place and secondly that it was in accordance with legal provisions and stated Council Policy. It is possible for a defendant to argue an abuse of process if decisions are not taken in accordance with or there is an absence of an Enforcement Policy. This can result in a case being dismissed by the Court and costs awarded against the Council.
- 5.5 The Council through the Public Protection and Environment Division plays a major role in protecting the community. The Council is responsible for ensuring food, goods and services are sold in a safe and fair manner, the air and our environment is clean and the borough is a safe place to live in. Regulatory Services staff are a vital source of information and impartial advice for businesses and residents to prevent something going wrong in the delivery of a business. The Council has entered into Primary Authority Partnerships with some of the Borough's major companies and provides professional advice for a fee. The businesses benefit from the arrangement safe in the knowledge that the Council's expert opinion applies across the United Kingdom as a secure base for business investment and operational decisions. The Council also engages with many small and medium size businesses and as a general principle seeks to 'encourage' rather than 'enforce' to achieve compliance with the law. An example of this approach is the promoting of businesses which are perceived by the Council through our inspection and auditing work to be excellent and this is delivered through such initiatives as 'Scores on the Doors' and 'Buy with Confidence'.

## **6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

- 6.1 The relevant legal provisions are contained within the main body of the report and Policy.

### Borough Treasurer

- 6.2 There are no financial implications arising from the recommendation in this report.

### Equalities Impact Assessment

- 6.3 The Policy seeks to ensure that any enforcement action is appropriate to the circumstances and that decisions are taken in a fair, equitable and consistent manner. An Equalities Impact Assessment is set out in Annex B.

### Strategic Risk Management Issues

- 6.4 The Council is put at risk if decisions in relation to enforcement action are taken without due consideration of the legislative framework. A properly considered and presented Enforcement Policy reduces that risk significantly.

Background Papers

Regulators Compliance Code  
Code for Crown Prosecutors  
Human Rights Act

Contacts for further information

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