

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 NOVEMBER 2017
ALL WARDS

ENFORCEMENT POLICY REVIEW
REGULATION AND ENFORCEMENT

1. Summary

- 1.1 On 6 April 2014 the Regulators Code came into force which had implications for all Local Authority Enforcement Policies. On 17th June 2015 a revised enforcement policy was agreed by this Committee following consultation and an equality impact assessment.
- 1.2 The new policy introduced a new risk assessment framework to improve standardisation of approach and assure the potential for inconsistency of enforcement decision making is minimised.
- 1.3 We are required to keep our Enforcement Policy under regular review. This report proposes that, subject to a minor clarification, the policy requires no further changes and the Committee is invited to approve it.

2. Recommendation

- 2.1 That Committee agree the Enforcement Policy which is attached at appendix 1.

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3. Background

- 3.1 The Regulation and Enforcement Division's Enforcement Policy is a document that provides officers with guidance in the application of enforcement decisions. It is as important for officers as it is for those against whom enforcement action might be taken as it helps to provide clarity and encourages consistency in the decision making process. As a Local Authority regulator, we are obligated to publish a policy by the Regulator's Compliance Code of 2014. It requires us to have regard to certain principles when constructing our own policy, which are repeated for convenience below.
- 3.2 The Regulators' Code attempts to improve the way regulation is delivered at the front line. It sets out a clear framework for transparent and accountable regulatory delivery and establishes clear principles for how local authorities should interact with those they are regulating. The Code is underpinned by the statutory principles of good regulation, which provide that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.
- 3.3 At the meeting of the Licensing and Public Protection Committee on 17th June 2015 the Regulation and Enforcement Division's Enforcement Policy was presented having been reviewed and updated under the duty on the Local Authority to have regard to the Regulator's Code in developing the principles and policies which guide their regulatory activities as well as the views of the members of the Licensing and Public Protection Committee. This is a review of that policy to ensure the information remains up to date with the code.

4. Regulators' Code

- 4.1 The Code places certain specific obligations upon regulators. Those obligations are set out below.
- 4.2 **Regulators should carry out their activities in a way that supports those they regulate to comply and grow.** Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.
- 4.3 **Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.** Regulators should have mechanisms in place to engage those they regulate, citizens and others to offer views and contribute to the development of their policies and service standards. Before changing policies, practices or service standards, regulators should consider the impact on business and engage with business representatives.
- 4.4 **Regulators should base their regulatory activities on risk.** Regulators should take an evidence based approach to determining the priority risks in

their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks.

- 4.5 **Regulators should share information about compliance and risk.** Regulators should collectively follow the principle of “collect once, use many times” when requesting information from those they regulate. When the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication.
- 4.6 **Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.** Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.
- 4.7 **Regulators should ensure that their approach to their regulatory activities is transparent.** Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them.

5. Changes to the Policy

- 5.1 The Policy is reviewed routinely through the Regulation & Enforcement Quality Management System, accredited by BSI. Quality Management Meetings, under which our system is administered, provide the opportunity for any interpretation issues to be discussed. Only one matter that has arisen has warranted a change to the Policy and is explained below.
- 5.2 The changes include reflecting that the Better Regulation Delivery Office (BRDO) is now Regulatory Delivery (RD). Further changes appear at paragraph 7.2.3 which relates to the introduction of the Enforcement Management Model (EMM) which is used in assessing further action for health & safety interventions; and paragraphs 7.5.1, 7.8.3 and 7.14.1 are changed. It corrects an omission from the previous Policy to make clear that prosecution may result from non-compliance with notices served and non-payment of a Fixed Penalty Notice. In making this change we are merely reflecting the legal consequence of either, non-compliance with notices issued and non-payment of FPN's. Before making a decision to prosecute for non-compliance or non-payment, officers will still apply all the other tests applicable to prosecution that are contained in the Policy.

6. Consultation

- 6.1 When our current Enforcement Policy was created in 2015 we consulted through the Council's website to enable anyone with an interest to make comment. The consultation ran from 13 March 2015 to 24 April 2015. Unfortunately there were no responses to the consultation.

6.2 A business focused event for the Greater Birmingham and Solihull LEP area was arranged and although widely promoted there was little interest in attending from businesses. The planned event was, therefore, cancelled and the people who had expressed an interest in attending directed to the website consultation.

6.3 In view of the very minor changes that officers have made to the policy, and in view of the fact that since its adoption we have not registered any formal complaints or concerns about our interpretation or application of the policy, we have not consulted externally.

7. Implications for Resources

7.1 No specific implications have been identified. The Policy guides the decision making process and there are no additional associated costs linked to it.

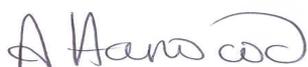
8. Implications for Policy Priorities

8.1 The issues addressed in this report underpin the City Council Vision, 'A city of growth where every child, citizen and place matters' and City Council Priorities, 'Children; Housing; Jobs and Skills; and Health'. They also support the Regulation and Enforcement Mission Statement: Locally accountable and responsive fair regulation for all - achieving a safe, clean, green and fair trading city for residents, business and visitors.

9. Public Sector Equality Duty

9.1 An initial Equality Analysis was completed in 2014 when the Policy was first drafted. The Equality Analysis is attached as Appendix 2. It has not been changed since 2014 given that the Policy has not changed significantly.

9.2 One of the benefits of an enforcement policy is to ensure consistency and fairness of enforcement throughout all communities and the commercial sector in Birmingham. The purpose of this Policy is to ensure that decisions are made transparently and to eliminate unfair or inequitable decisions. By its nature it should not have an adverse impact on anyone with protected characteristics.



ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Regulators Code 2014