

BABERGH & MID SUFFOLK DISTRICT COUNCIL

To: Overview & Scrutiny (Community Services) Committee	Report Number: L169
From: Head of Corporate Organisation	Date of meeting: 27 March 2012

NEW JOINT CORPORATE ENFORCEMENT POLICY

1. Purpose of Report

- 1.1 To recommend the introduction of a revised joint Corporate Enforcement Policy for both Babergh and Mid Suffolk District Councils.

2. Recommendation

That the joint Corporate Enforcement Policy attached as an appendix to this report be adopted with immediate effect.

The Committee is asked to make a recommendation to Strategy Committee.

3. Financial Implications

- 3.1 None.

4. Risk Management

- 4.1 None provided that a revised Policy as attached is adopted in a timely manner.

5. Consultations

- 5.1 Consultation has been carried out with the Council Officers who will both utilise the revised Policy and those who authorise and manage the relevant Officers.

6. Equality Analysis

- 6.1 It is considered that this report complies with the necessary requirements.

7. Shared Service / Partnership Implications

- 7.1 As mentioned above this revised policy aligns the Corporate Enforcement Policies of both Babergh and Mid Suffolk District Councils. It was first presented to Mid Suffolk members at the Community Policy Panel meeting on 20 March 2012 and will be presented to Mid Suffolk District Council's Executive Committee for approval on 10 April 2012.

8. Key Information

- 8.1 As a matter of good practice every Local Authority should have an up-to-date Corporate Enforcement Policy to cover all regulatory enforcement carried out by the Council. This includes both criminal and civil action aimed at ensuring that individuals and business comply with the law.

- 8.2 Babergh District Council currently has two Corporate Enforcement Policies dating back to 2003 and earlier. Mid Suffolk District Council's current Corporate Enforcement Policy dates back to May 2007.
- 8.3 Neither Council's Corporate Enforcement Policy is particularly up-to-date. In the light of this an exercise has recently been undertaken to draft up a joint Corporate Enforcement Policy fit for use by both Babergh and Mid Suffolk District Councils. The proposed joint Corporate Enforcement Policy which has been drafted following extensive consultation with relevant Officers is attached herewith as an appendix to this report.
- 8.4 The proposed draft joint Corporate Enforcement Policy is intended to assist in supporting the regulatory enforcement work carried out by the new joint enforcement officer teams. It will be reviewed and amended as appropriate at least every two years or earlier if necessary.
- 8.5 If approved by members at this meeting the proposed draft joint Corporate Enforcement Policy will be reported to the Council's Strategy Committee on 12 April 2012 with a recommendation for adoption at Babergh District Council with immediate effect.

9. Appendices

Title	Location
(a) Proposed draft joint Corporate Enforcement Policy.	Attached

10. Background Documents

- 10.1 Statutory provisions and Guidance as mentioned in paragraph 1.3 of the draft joint Corporate Enforcement Policy.

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**BABERGH DISTRICT COUNCIL
MID SUFFOLK DISTRICT COUNCIL**

CORPORATE ENFORCEMENT

Statement of Policy

1. INTRODUCTION

- 1.1 Enforcement is the method by which any enforcement body compels a person to act in such a way as to not break the law. Enforcement is for the benefit of the public, consumers, the environment and legitimate business.
- 1.2 The purpose of this Policy is to ensure compliance with the law, whilst minimising the burden on individuals and businesses. It sets out what individuals and businesses can expect from Council regulation.
- 1.3 The Policy is based on the following statutory provisions and guidance:
- Police and Criminal Evidence Act 1984;
- Criminal Procedure and Investigations Act 1996;
- Human Rights Act 1998;
- Regulation of Investigatory Powers Act 2000;
- Criminal Justice and Police Act 2001;
- Legislative and Regulatory Reform Act 2006 (“LRRRA”);
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007;
- Regulators Compliance Code (“RCC”);
- Regulatory Enforcement and Sanctions Act 2008 (“RESA”);
- Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 (“CRE Enforcement Order”);
- Co-ordination of Regulatory Enforcement (Procedure for References to the LBRO) Order 2009.
- 1.4 The LRRRA established the Principles of Good Regulation set out in the RCC. Enforcement should be proportionate, accountable, consistent and targeted to areas which need action.
- 1.5 When considering formal enforcement action, where appropriate and reasonably practical we will discuss the alleged breach with the suspected individual or business and take any comments into account in deciding what action is appropriate. There may be occasions when this is not appropriate if it would defeat the purpose of the proposed enforcement action.

- 1.6 In respect of individuals or businesses operating in more than one local authority area which have registered a Primary Authority agreement under the RESA in cases specified in the CRE Enforcement Order we will notify the Primary Authority of the enforcement action we intend to take. We may also notify the Local Better Regulation Office (“LBRO”) in appropriate cases.

2. MEANING AND SCOPE OF ENFORCEMENT

- 2.1 This Policy applies to regulatory enforcement carried out by Babergh and Mid Suffolk District Councils (“the Council(s)”) including both criminal and civil action aimed at ensuring individuals and business comply with the law. There are separate Prosecution Policies for the Councils’ Housing and Council Tax Benefit cases.

- 2.2 Section 28 of the RESA defines “enforcement action” as follows:

- (a) Any action which relates to securing compliance with any restriction, requirement or condition in the event of the breach of such;
- (b) Any action taken with a view to or in connection with the imposition of any sanction (criminal or otherwise) in respect of an act or omission;
- (c) Any action taken with a view to or in connection with the pursuit of any remedy conferred by an enactment in respect of an act or omission.

- 2.3 The Councils and Enforcement Officers will be required to interpret and apply all legal requirements fairly and consistently in respect of similar offences.

- 2.4 In appropriate cases we will publicise unlawful trade practices and the results of enforcement action.

3. PRINCIPLES OF ENFORCEMENT

- 3.1 We will work on the basis of the principles set out in the RCC, the Enforcement Concordat and any guidance from LBRO.

- 3.2 We will seek to prevent breaches of regulation by advice and publicity but will take formal enforcement action where it is necessary to do so.

- 3.3 In accordance with RCC our enforcement Policy will:

Aim to change the behaviour of the offender;

Aim to eliminate any financial gain or benefit from non-compliance;

Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma associated with a criminal conviction;

Be proportionate to the nature of the offence and the harm caused;

Aim to restore the harm caused by regulatory non-compliance, where appropriate; and

Aim to deter others from offending.

- 3.4 Enforcement action will be applied in accordance with the Equality Act 2010 and will not be affected by ethnicity or national origin, gender, religion or belief, disability gender reassignment or sexual orientation. The age of the victim or the offender will only be a consideration in appropriate cases for example elderly victims or young offenders.
- 3.5 The views of the victim and any other relevant person will be taken into account in deciding to take formal enforcement action and in particular any harm to the victim or the environment.
- 3.6 Alleged offenders will be notified as soon as an investigation commences and any enforcement action proposed unless this adversely affects the investigation or place the public or the environment at risk.
- 3.7 Businesses, victims and witnesses will be kept informed of progress throughout an investigation and confidentiality will be maintained except where this would not be in the public interest.

4. ENFORCEMENT ACTION

- 4.1 The following enforcement actions will be taken in appropriate cases:
 - (a) No action;
 - (b) Informal warning and/ or advice;
 - (c) Fixed Penalty Notices;
 - (d) Statutory Notices and suspending, cancelling, reviewing or refusing to review a Licence;
 - (e) Simple Caution;
 - (f) Forfeiture proceedings;
 - (g) Seizure of goods or equipment;
 - (h) Injunctions and other civil actions;
 - (i) Works in default;
 - (j) Prosecutions;
 - (k) Proceeds of Crime Applications;
 - (l) Administrative Penalties Administrative penalties in Housing Benefit and Council Tax Benefit cases.
- 4.2 In deciding which enforcement action (if any) is necessary and proportionate the following guidelines will be taken into account:
 - (a) The gravity of an alleged offence, together with the seriousness of any actual or potential harm;

- (b) The previous record of the individual or business concerned;
- (c) Any obstruction or lack of co-operation on the part of the offender;
- (d) The harm that has been caused or the risk to persons, the environment or public funds;
- (e) The statutory provisions and Codes of Practice set out in paragraph 1.3 above;
- (f) Legal advice;
- (g) Age where this is a relevant consideration (i.e. in relation to children/ young persons).

5. DETAILED EXPLANATION OF ENFORCEMENT ACTIONS

5.1 No Action

5.1.1 In certain situations contraventions may not warrant action. Examples include where the cost of compliance or the cost of the enforcement action outweighs the detrimental impact of the contravention on the community. It may also apply where the offender is in some way vulnerable and/ or suffering from serious illness. In all cases reasons will be clearly given.

5.2 Informal warning and advice

5.2.1 We may take informal action when:

- the problem is not too serious;
- we have a high level of confidence that the offender will remedy the situation and /or will not reoffend (we will take into account past experience where appropriate/relevant);
- there is no significant risk to persons, the environment or public funds.

5.2.2 Verbal or written warnings and advice may be given. If appropriate time will be given to put the matter right. Failure to do so may result in further action. Advice will distinguish between good practice and legal requirements.

5.3 Fixed Penalty Notices

5.3.1 In certain situations legislation provides a power to issue a fixed penalty notice which allows an offender to pay a sum in respect of the offence and remove the need for the matter to be brought to court. A fixed penalty notice may be issued without prior warning. For the avoidance of doubt a fixed penalty notice will **not** be issued for serious offences.

5.4 Statutory Notices and suspending, cancelling, reviewing or refusing to renew a licence

5.4.1 In certain situation legislation provides for a statutory notice to be issued either to take specified action or cease specified action. The action to be taken and time allowed to comply with the notice will vary depending on the harm to health and safety, environmental damage or nuisance involved. Notices state the implications of non-compliance. With certain notices there may be a statutory right of appeal, in which case this will be specified in the notice.

5.4.2 A statutory notice may be issued, or a licence may be suspended or revoked if one of the following applies:

- we have a statutory duty to do so;
- the offender has significantly disregarded the law;
- we consider that the offender will not respond to informal action;
- the offender has a history of disregarding the law or not obeying regulations;
- standards found are generally poor and the offender does not seem to be aware of their legal obligations;
- there is a risk of serious harm to public health or safety, of public nuisance, or of permanent damage;
- in addition to prosecuting, we need to take measures to remedy serious or deteriorating conditions, or we have to serve a notice to support a prosecution.

5.4.3 We will usually prosecute and/or carry out the works ourselves if you ignore a statutory notice. We will seek to recover **all** our reasonable costs if necessary via the Criminal Courts or if appropriate by civil action in the County or High Court.

5.5 Simple Caution

5.5.1 Where an offence has been committed which would otherwise result in prosecution and the offender accepts it a simple caution may be administered. If the offender does not accept a simple caution this will be a material matter in deciding whether or not to prosecute.

5.5.2 A simple caution is an admission of guilt but does not result in a conviction or sentence. They will be issued to:

- deal quickly and simply with less serious offences;
- divert less serious offences away from the Courts;
- reduce the chances of repeat offences.

5.5.3 The criteria for a simple caution to be administered are:

- (a) Sufficient evidence to prove the case;
- (b) The offender must admit the offence;
- (c) It is in the public interest;
- (d) The offender is 18 years or over.

5.5.4 In determining whether or not a simple caution is appropriate a previous caution in the preceding two years will be taken into account.

5.5.5 If while a simple caution is in force (i.e. for two years from date of caution) the offender is found guilty or pleads guilty to another offence in England and Wales the simple caution may be cited in Court and may influence the sentence passed.

5.6 Forfeiture Proceedings

5.6.1 This procedure can be used to ensure that goods are disposed of to prevent further problems. It will normally be used in addition to prosecution and seizure.

5.7 Seizure of Goods or Equipment

5.7.1 Enforcement Officers are authorised by legislation to seize certain goods or equipment for example unsafe food or sound equipment causing a statutory nuisance which may be used as evidence in subsequent Court proceedings. When goods are seized a receipt will be issued.

5.8 Injunctions and other Civil Actions

5.8.1 Where offenders are repeatedly convicted of similar offences or where prosecution is not an adequate remedy an injunction may be applied for to prevent further offences being committed.

5.8.2 Where there is evidence of anti-social behaviour involving persistent targeting of an individual or group in an area such as social housing an Anti-Social Behaviour Order (ASBO) or a Criminal Anti-Social Behaviour Order (CRASBO) as appropriate will be applied for.

5.8.3 An application for an ASBO may be made where the following apply:

- where it appears that a person, aged 10 years or over, has acted in an anti-social manner;
- there is a need to protect the public from behaviour likely to cause harassment, alarm or distress;
- there is evidence 'beyond reasonable doubt' of past acts of anti-social behaviour within the previous six months.

The application will be discussed with the Police and other agencies, as appropriate, before the application is made.

5.8.4 In certain circumstances where there is persistent anti-social behaviour an interim ASBO may be applied for to provide immediate protection to the community in advance of a full hearing where:

- it will put an immediate stop to anti-social behaviour;
- it will reduce the scope for witness intimidation.

5.8.5 A CRASBO may be applied for in any prosecution where the Prosecutor considers that a CRASBO would assist in preventing an offender from committing further or similar criminal offences.

5.9 Works in Default

5.9.1 Under certain statutory notices a Council may carry out specified works itself and recover the cost from an offender if an offender fails to comply with a statutory notice within the specified time scale.

5.10 Prosecutions

5.10.1 Where none of the above actions are considered appropriate prosecution proceedings may be considered and a criminal prosecution brought against the offender.

5.10.2 In deciding whether to prosecute the Code for Crown Prosecutors will apply. The Code is a public document issued by the Director of Public Prosecutions which sets out general principles to follow when deciding whether or to prosecute.

5.10.3 A prosecution may be brought if the following two tests are satisfied

- (a) Is there enough evidence against the defendant? Evidence has to be admissible in Court and reliable and support a realistic prospect of conviction against the defendant. Any defence available to the defendant must also be considered.
- (b) Is it in the public interest for the prosecution to be brought to Court?

5.10.4 The following criteria (not an exhaustive list) will be considered in relation to the “public interest test” under 5.10.3 (b) above:

- a. Does the alleged offence involve a deliberate or flagrant breach of the law such that public health, safety or well-being is or has been put at risk or permanent damage has been caused?
- b. Has there been a reckless disregard for the environment?
- c. Does the alleged offence involve deception which may or may not result in loss or potential loss to public funds?
- d. Is the integrity of any licensing activity threatened?
- e. Does the alleged offence involve a failure to correct an identified serious potential risk having been given a reasonable opportunity to do so?
- f. Does the alleged offence involve a failure to comply either in part or in full with the requirements of a statutory notice or licence?
- g. Has a statutory notice or fixed penalty been issued in respect of a previous offence?
- h. Is there a history of similar offences?
- i. Has a Simple Caution been offered and refused?
- j. Is the contravention of the law particularly serious, or has there been a blatant disregard of the law?
- k. Is the integrity of the Councils’ enforcement activities threatened?
- l. Is prosecution desirable to reassure the public or deter other offenders?

5.11 Proceeds of Crime Applications

5.11.1 In appropriate cases an application under the Proceeds of Crime Act 2002 may be made to the Court to restrain and/or confiscate the assets of an offender. This is designed to recover the financial benefit that the offender has obtained from his crime. These proceedings are based on balance of probabilities, the civil burden of proof.

6. DECISION PROCESS

- 6.1 Decisions will be based on the principles set out in this Policy.
- 6.2 The decision will involve consultation between investigating officers, senior managers, Lawyers in Legal Services and if appropriate with external Legal Advisers; and will be in accordance with the appropriate Councils' Officer Delegations of Functions and respective Constitutions.
- 6.3 Where the Council is considering enforcement action against a business which is registered under the Primary Authority scheme, the Council will contact the Primary Authority and will generally follow any guidance given. The Primary Authority can veto the proposed enforcement action, if it believes it to be inconsistent with advice or guidance that it has previously provided.

7. LIAISON WITH OTHER AGENCIES

- 7.1 In addition to notifying LBRO in appropriate cases the Councils may, where appropriate, cooperate and coordinate with any relevant enforcement authority. Such bodies may include the Suffolk Constabulary, the Suffolk Fire & Rescue Authority, the Health and Safety Executive, the Food Standards Agency, the Environment Agency and/ or Suffolk County Council Trading Standards.

8. ENFORCEMENT OFFICERS AND REVIEW

- 8.1 All Enforcement Officers and other relevant staff will be notified of this Policy and the most recent copy will be available on the intranet. All Enforcement Officers will familiarise themselves with this document. As appropriate, Enforcement Officers will receive a document authorising them to undertake enforcement duties, and will keep this available for presentation at all times.
- 8.2 This Policy will be reviewed and amended as appropriate at least every **two years** (or earlier if necessary), in consultation with all Council Officers engaged in enforcement activities as part of their role. The Councils' Governance and Law Lead will be authorised to make minor or inconsequential amendments to this Policy as necessary as a result of changes/ amendments to the statutory provisions and/ or guidance as mentioned in paragraph 1.3 above and/ or in relation to any typing or minor drafting errors.

**Legal Services
Babergh & Mid Suffolk District Councils**

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