

**Cheltenham Borough Council**  
**Cabinet – 24<sup>th</sup> June 2014**  
**Council – 21st July 2014**  
**Corporate Enforcement Policy**

|                               |  |
|-------------------------------|--|
| <b>Accountable member</b>     | <b>Councillor Andrew McKinlay, Cabinet Member Development and Safety</b>   |
| <b>Accountable officer</b>    | <b>Mark Nelson</b>   |
| <b>Ward(s) affected</b>       | <b>All</b>   |
| <b>Key Decision</b>           | <b>Yes</b>   |
| <b>Executive summary</b>      | <p>The policy seeks to promote proportionate, consistent and targeted regulatory action through the development of transparent and effective dialogue and understanding between the Council and those they regulate.</p> <p>The policy takes full account of the Department for Business, Innovation and Skills' Regulators Code 2013 and the associated statutory principles of enforcement action.</p>                             |
| <b>Recommendations</b>        | <p><b>1.1 Approve the amendments to the current Corporate Enforcement Policy attached in Appendix 2 and to recommend the Policy for adoption by full Council.</b></p> <p><b>1.2 Authorise the Director of Environmental and Regulatory Services to make amendments to the adopted Policy as required to reflect changes in legislation or guidance and codes of practice where a full review of the Policy is not warranted.</b></p> |
| <b>Financial implications</b> | <p>None.</p> <p><b>Contact officer: Nina Philippidis, Accountant</b><br/> <b>nina.philippidis@cheltenham.gov.uk, 01242 264121</b></p>  |

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| <b>Legal implications</b>  | <p>Section 21 of the Legislative and Regulatory Reform Act 2006 (the “Act”) imposes a duty on any person exercising a specified regulatory function to have regard to the five principles of good regulation. This principle provides 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.</p> <p>Section 22 of the Act provides for the issue of code of practice relating to the exercise of regulatory functions, (the “Regulators’ Compliance Code”). This section imposes a duty on any person exercising a specified regulatory function to have regard to the Regulators’ Compliance Code when determining general policies or principles by reference to which that person exercises those functions.</p> <p>Under Section 22(3) of the Act, where a person exercises a regulatory function of setting standards or giving general guidance about the exercise of other regulatory functions, the duty to have regard to the Regulators’ Compliance Code applies directly to the exercise of setting that function of setting standards or giving general guidance.</p> <p><b>Contact officer: vikki.fennell@tewkesbury.gov.uk, 01684 272015</b></p> |
| <b>HR implications (including learning and organisational development)</b> | None  |
| <b>Key risks</b>   | <b>See appendix 1</b>   |
| <b>Corporate and community plan Implications</b>                           | Effective dialogue and appropriate enforcement action, promoted by this enforcement policy, underpins Corporate objectives and community planning   |
| <b>Environmental and climate change implications</b>                       | <p>This policy positively contributes to the Council’s corporate objectives in respect of the environment and climate change.</p>   |
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## **1. Background**

- 1.1 The Policy is being reviewed and updated to take account of changes in legislation and the introduction of a new Regulators Code. Due to statutory requirements the policy must be approved by both Cabinet and Council. (See point 2.1 below). The intention of the new policy is to create a clearer, consistent approach covering all regulatory service across the Council.

## **2. Reasons for recommendations**

- 2.1 The review of the Corporate Enforcement Policy is being submitted to Cabinet for consideration prior to adoption by full Council. The Local Authorities (Functions & Responsibilities) (England) Regulations 2000 sets out a scheme for dividing the Council's regulatory functions into either Council side or Executive (Cabinet) functions. The regulatory functions which come under the remit of the Corporate Enforcement Policy consist of both Council and Executive functions and it is therefore appropriate for Cabinet to consider the Policy and make recommendations prior to approval by full Council. A copy of the revised Policy is attached as Appendix 2.
- 2.2 The current Policy was approved in 2007.
- 2.3 Under the provisions of the Legislative and Regulatory Reform Act 2006 (the "Act") the Council are required to have regard to the principles of good regulation in regards to certain specified regulatory activities. The principles are 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. The Act also requires the Council to comply with a statutory code of practice (the "Regulators' Compliance Code"). The Council must have regard to this Code when developing standards, policies or procedures that guide their regulatory activities.
- 2.4 The Council is responsible for enforcing a wide range of legislation within the Borough of Cheltenham. The Corporate Enforcement Policy summarises the Council's overall approach to the use of enforcement powers generally, and outlines what residents, businesses, consumers and workers can expect from enforcement officers. This could range from criminal prosecution at one end of the spectrum to informal warnings and advice at the other.
- 2.5 A Corporate Enforcement Policy will promote a consistent approach and ensure that all departments involved in enforcement are complying with its principles. At the same time it allows the flexibility for each service area to develop its own enforcement mechanisms, taking on board the legal and operational differences between the service areas.

## **3. Consultation and feedback**

- 3.1 All departments who carry out enforcement activity have been consulted on the content of the policy and the policy was published on the Council's website for comments.

## **4. Risk Management**

- 4.1 The adoption of the Corporate Enforcement Policy will mean that enforcement action is less likely to be challenged during legal proceedings. This should reduce the likelihood of costs orders being awarded against the Council.
- 4.2 Without a suitable enforcement policy there will be no standard against which officers can judge their enforcement decisions. There is a risk that this could lead to the Council being open to legal challenge or an appeal against enforcement decisions and being non-compliant with the Regulators code.

**4.3** This Policy provides a clear framework and has taken account of the new regulators code and covers all the required specified regulatory functions and mitigates any risk of legal challenge regarding the exercise of the Council's regulatory enforcement functions.

**4.4**

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| <b>Report author</b> | <b>Contact officer: Mark Nelson, mark.nelson@cheltenham.gov.uk,<br/>01242 264165</b>                       |
| <b>Appendices</b>    | <ol style="list-style-type: none"><li>1. Risk Assessment</li><li>2. Corporate Enforcement Policy</li></ol> |

| The risk   |  |            |             | Original risk score (impact x likelihood) |                |       | Managing risk |   |          |                     |                              |
|--|--|------------|-------------|---|----------------|-------|---------------|---|----------|---------------------|------------------------------|
| Risk ref.  | Risk description   | Risk Owner | Date raised | Impact 1-5                                | Likelihood 1-6 | Score | Control       | Action  | Deadline | Responsible officer | Transferred to risk register |
|  | <p>The Council is expected to fulfil its duties and responsibilities when considering and taking enforcement action. This policy helps ensure that, where necessary, appropriate enforcement action is taken, that such action is proportionate, consistent and targeted and that there has been transparent and effective dialogue between the Council and those subject to regulation.</p> <p>Failure to adopt and follow this enforcement policy may result in inequitable enforcement, associated damage to the Council's reputation and failed action, resulting in wasted officer time and potentially legal expenses and court costs.</p> | Council    |             | 4   | 2              | 8     | reduce        | Approve revised policy for officers to follow |          | Mark Nelson         |                              |
|  |  |            |             |   |                |       |               |   |          |                     |                              |
|  |  |            |             |   |                |       |               |   |          |                     |                              |
|  |  |            |             |   |                |       |               |   |          |                     |                              |
| <b>Explanatory notes</b>   |  |            |             |   |                |       |               |   |          |                     |                              |
| <p><b>Impact</b> – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> |  |            |             |   |                |       |               |   |          |                     |                              |

**Likelihood** – how likely is it that the risk will occur on a scale of 1-6

(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

**Control** - Either: Reduce / Accept / Transfer to 3rd party / Close

## **Guidance**

Types of risks could include the following:

- Potential reputation risks from the decision in terms of bad publicity, impact on the community or on partners;
- Financial risks associated with the decision;
- Political risks that the decision might not have cross-party support;
- Environmental risks associated with the decision;
- Potential adverse equality impacts from the decision;
- Capacity risks in terms of the ability of the organisation to ensure the effective delivery of the decision
- Legal risks arising from the decision

Remember to highlight risks which may impact on the strategy and actions which are being followed to deliver the objectives, so that members can identify the need to review objectives, options and decisions on a timely basis should these risks arise.

## **Risk ref**

If the risk is already recorded, note either the corporate risk register or TEN reference

## **Risk Description**

Please use “If xx happens then xx will be the consequence” (cause and effect). For example “If the council’s business continuity planning does not deliver effective responses to the predicted flu pandemic then council services will be significantly impacted.”

## **Risk owner**

Please identify the lead officer who has identified the risk and will be responsible for it.

## **Risk score**

Impact on a scale from 1 to 5 multiplied by likelihood on a scale from 1 to 6. Please see risk [scorecard](#) for more information on how to score a risk

## **Control**

Either: Reduce / Accept / Transfer to 3rd party / Close

## **Action**

There are usually things the council can do to reduce either the likelihood or impact of the risk. Controls may already be in place, such as budget monitoring

or new controls or actions may also be needed.

**Responsible officer**

Please identify the lead officer who will be responsible for the action to control the risk.

For further guidance, please refer to the [risk management policy](#)

**Transferred to risk register**

Please ensure that the risk is transferred to a live risk register. This could be a team, divisional or corporate risk register depending on the nature of the risk and what level of objective it is impacting on