

	<h2>Policy and Resources Committee</h2> <h3>21st March 2017</h3>
<p style="text-align: right;">Title</p>	<p>Corporate Enforcement and Prosecution Policy</p>
<p style="text-align: right;">Report of</p>	<p>Jamie Blake, Commissioning Director, Environment</p>
<p style="text-align: right;">Wards</p>	<p>ALL</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Urgent</p>	<p>No</p>
<p style="text-align: right;">Key</p>	<p>No</p>
<p style="text-align: right;">Enclosures</p>	<ol style="list-style-type: none"> 1. Consultation findings 2. Equalities Impact Assessment 3. Corporate Enforcement and Prosecution Policy
<p style="text-align: right;">Officer Contact Details</p>	<p>Matt Leng, Community Safety Manager, Matt.Leng@Barnet.gov.uk, 0208 359 2995</p>

<h2>Summary</h2>
<p>On the 28th June 2016 the Policy and Resources Committee were presented with the draft copy of the Corporate Enforcement and Prosecution Policy.</p> <p>Members noted the purpose of the policy and agreed to the public consultation going ahead for the Corporate Enforcement and Prosecution Policy and for an Equalities Impact Assessment to be conducted by officers.</p> <p>This report provides feedback on the public consultation and the outcome of the Equalities Impact Assessment and seeks agreement from the Policy and Resources Committee to implement the Corporate Enforcement and Prosecution Policy with effect from 1st April 2017.</p>

Recommendations

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| 1. That the Policy and Resources Committee consider the findings of the public consultation (Appendix 1) |
| 2. The Committee consider the Equalities Impact Assessment (Appendix 2) |
| 3. The Committee approves the Corporate Enforcement and Prosecution Policy (Appendix 3) |
| 4. The Committee approves the implementation of the Corporate Enforcement and Prosecution Policy with effect from 1st April 2017. |

1. WHY THIS REPORT IS NEEDED

- 1.1 At the Policy and Resources Committee meeting on 28th June 2016, members were presented with the draft Corporate Enforcement and Prosecution Policy. Members noted and agreed to the public consultation going ahead for the and for an Equalities Impact Assessment to be conducted by officers.
- 1.2 This report is being presented in accordance with the Member's request that officers provide a summary of the consultation feedback and the Equalities Impact Assessment and seek final member approval of the Corporate Enforcement and Prosecution Policy.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The Policy and Resources Committee asked officers to present the final policy, consultation feedback and the Equalities Impact Assessment. These tasks have now been completed and therefore final approval is being sought.
- 2.2 Service specific enforcement policies are already in place across the council. This Corporate Enforcement and Prosecution Policy sets out the minimum standards which all the Council's departmental/service enforcement policies and enforcement approach should comply with.
- 2.3 Members are being asked to agree the implementation date of 1st April 2017. This will allow sufficient time for the policy to be uploaded on the council web page and for all relevant departments/services to be notified about the policy and the process for self-assessment.
- 2.4 Members are being asked to note that an annual Corporate Enforcement Performance report shall be provided to the appropriate committee with the first annual report being presented in June 2018.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The alternative option presented to the Policy and Resources Committee on the 28th June 2016 was to do nothing.
- 3.2 This option risked the Council applying an inconsistent approach to enforcement and prosecution and the potential risk of non-compliance with the Cabinet Office Enforcement Concordat and the Statutory Code for Regulators (2014). It also represented a risk of cases prosecuted being subjected to judicial review as a result of the Council not adhering to the Statutory Code.
- 3.3 This option was therefore not recommended.

4. POST DECISION IMPLEMENTATION

- 4.1 The Corporate Enforcement and Prosecution Policy will be publicised on the Council Website and communicated to all staff.
- 4.2 All service specific Enforcement and Prosecution Policies and procedures that have not undergone a review in the last six months will be reviewed to ensure they are aligned with the Corporate Policy. The identified affected departments include:
- Private Sector Housing
 - Planning
 - Public Health and Nuisance
 - Food, Health & Safety
 - Trading Standards & Licensing
 - Building Control
 - Barnet Homes
 - Barnet Council Community Safety
- 4.3 The Council's Corporate Anti-Fraud Team commenced an audit of all Re policies and procedures in June 2016. The findings and recommendations will form part of the council's audit for compliance with the Corporate Enforcement and Prosecution Policy. The final report was completed on 31st January 2017.

5. IMPLICATIONS OF DECISION

Corporate Priorities and Performance

- 5.1 The Council's Corporate Plan 2015-20 sets out the following strategic objectives:

That Barnet Council, working with local, regional and national partners, will strive to make sure that Barnet is the place:

- Of opportunity, where people can further their quality of life.
 - Where responsibility is shared, fairly.
 - Where people are helped to help themselves, recognising that prevention is better than cure.
 - Where services are delivered efficiently to get value for money for the taxpayer.
- 5.2 Agreement of this policy will ensure the Council's approach to regulating compliance and applying any enforcement action is fair, consistent and transparent and that the responsibility of being compliant is equally shared across the council, residents and businesses.
- 6. Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**
- 6.1 There are no financial implications as a direct result of establishing this policy.
- 6.2 The application of the Corporate Enforcement and Prosecution Policy and the self-audit tool across all the relevant departments/services will ensure consistency in delivery of 'business as usual', reduced demand upon services resulting in higher service user and stakeholder satisfaction including reputational benefit for the Council's Enforcement and Prosecution services.

7. Legal and Constitutional References

- 7.1 In drafting enforcement policies the Council is required to have regard to the statutory guidance in the Regulators Code.
- 7.2 Council Constitution, Responsibility for Functions, Annex A (not appended to this report) sets out that the terms of reference of Policy and Resources Committee includes:
- 'To be the principal means by which advice on strategic policy and plans is given and coordinated'
 - and 'To be responsible for those matters not specifically allocated to any other committee affecting the affairs of the Council'.

8. Risk Management

- 8.1 Legal services have been consulted on the draft Corporate Enforcement and Prosecution Policy to ensure it accurately represents the statutory powers of the Local Authority and relevant codes of compliance.
- 8.2 The use of the Corporate Enforcement and Prosecution Policy self-audit tool will act as an assurance that the departments/services affected are compliant in their policies, practices and procedures thus reducing the risk to the Council as highlighted in point 3.2.

9. Equalities and Diversity

- 9.1 All Council policies are required to undergo an equalities impact assessment to ensure the approach does not have a disproportionate adverse impact resulting in service inequality to the residents of Barnet.
- 9.2 Being fair and giving equal chances to all our residents is central to Barnet's Corporate Plan 2016 -2020 and the council's strategic equalities objective, (SEO), that "Citizens will be treated equally, with understanding and respect, and will have equal access to quality services which provide value to the taxpayer". Barnet and organisations acting on its behalf are committed to fair treatment for all our citizens balancing their different needs and rights as we support our more vulnerable residents and incorporate the principles of equality into everything we do as a Council. The general duty on public bodies is set out in Section 149 of the Equality Act 2010.
- 9.3 A public authority must, in the exercise of its functions, have *due regard* to the need to:
- (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.3.1 The protected characteristics are:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race / ethnicity
- religion or belief
- gender / sex
- sexual orientation
- marital status (including civil partnership)

9.3.2 Where appropriate the council considers the impact of proposals on other vulnerable groups including:

- a. Unemployed people and young people not in employment education and training (NEETs)
- b. People with specific disabilities including people mental health problems
- c. Lone parents and some families
- d. People with a low income
- e. Carers including young and parent carers

9.4 Enforcement and prosecution action has the potential to affect all equalities groups. The development of the performance management framework for enforcement and prosecution could also capture data on the protected characteristics to measure impact.

9.5 The initial Equalities Impact Assessment has highlighted that there are eight groups with protected characteristics that have been identified as having the potential to be impacted by this Enforcement Policy.

The groups identified are:

- All persons aged above 10 years old – the age of criminal responsibility in the UK
- People whose first language is not English– those with limited or no ability to understand how the policy/law affects them day to day
- People who do not speak English as a first language (or at all) – those with limited or no ability to understand how the policy/law affects them day to day
- People with mental health issues – those who lack capacity to understand the way this policy may affect them day to day
- Households with a low income – those households who may lack the financial income to pay fixed penalty notices or fines
- Unemployed people – those individuals who may lack the financial income to pay fixed penalty notices or fines
- Young people not in employment education or training – those who may lack financial income to pay fixed penalty notices or fines and be financially dependent upon their parent(s)/carer(s).
- Rough Sleepers/homeless – those who may lack the financial income to pay fixed penalty notices or fines

9.6 The groups identified in the Equalities Impact Assessment for the Corporate Enforcement and Prosecution Policy are in alignment with those groups identified in the Street Scene Alternate Delivery Model which was presented to the Environment Committee on 14 July 2016.

9.7 The Equality Impact Assessment undertaken and approved by the Council's Commissioning and Equalities Policy Officer within the Commissioning Group is at Appendix 2 of this report and is to be reviewed annually as part of the

annual performance report that will be submitted to the Policy and Resources Committee to inform the Council's response to the groups that are *likely to be affected* identified in point 9.5 above.

9.8 In order to mitigate the potential impact upon the groups identified by the initial Equalities Impact Assessment the balance of proceeding with an enforcement action will need to be on a case by case basis.

10. Consultation and Engagement

10.1 The consultation was conducted using the approach which was recommended by the consultation team and agreed by members on the 28th June 2016.

10.2 The full survey, including all questions and analysis has been appended to this report at Appendix 1.

10.3 There were 15 responses to the consultation therefore there is a need to exercise caution when considering the statistical data representation due to the small sample size.

10.4 Comments of note recorded in the free text responses mentioned dissatisfaction at the lack of parking enforcement around primary schools. There were comments around asking that cautions¹ were not overused, and that the council undertook operations against fast food premises that did not effectively manage the litter created from their businesses.

10.5 In terms of problems related to anti-social behaviour, the problems that ranked highest on the list of priorities were 'people being drunk or rowdy in public places' and 'abandoned or burnt out cars'.

10.6 When respondents were asked the extent to which they agree with the aims of the Corporate Enforcement and Prosecution Policy 67% (10 respondents) agreed with the aims.

10.7 43% (6 respondents, 1 respondent didn't know) of respondents said they were undecided as to the extent to which they found the policy clear and easy to understand.

10.8 The most important principle for respondents identified in the Corporate Enforcement and Prosecution Policy was to have consistency between inspections by officers.

10.9 In terms of enforcement and compliance activities, the activities that respondents supported most were educational activities supporting people to comply.

¹ The Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council is likely to consider prosecution.

10.10 As a result of the consultation, a plain English summary of the policy is attached at Appendix 4 of this report.

11. BACKGROUND PAPERS

Recent papers to various committees on enforcement and some examples of web links to the council's service specific enforcement actions are listed below.

Policy and Resources Committee Paper entitled 'Enforcement and Prosecution Policy' that was heard at the 28th June Policy and Resources Committee

<http://barnet.moderngov.co.uk/documents/s32723/Barnet%20Draft%20Corporate%20Enforcement%20and%20Prosecution%20Policy.pdf>

Street Scene Enforcement Policy and Procedure

<https://barnet.moderngov.co.uk/documents/s30193/Streetscene%20Enforcement.pdf>

Environmental Crime – Fixed Penalty Notices

<https://www.barnet.gov.uk/citizen-home/parking-roads-and-pavements/Street-cleaning/litter-enforcement/fixe-penalty-notice.html>

Moving Traffic Conventions

<https://barnet.moderngov.co.uk/documents/s23696/Moving%20Traffic%20Contraventions.pdf>

Planning enforcement

<https://www.barnet.gov.uk/citizen-home/planning-conservation-and-building-control/planningenforcement.html>

HMO Licensing

<https://barnet.moderngov.co.uk/documents/s29179/Additional%20Licensing%20Scheme%20for%20Houses%20in%20Multiple%20Occupation.pdf>

Parking Enforcement

<https://www.barnet.gov.uk/citizen-home/parking-roads-and-pavements/parking/parkingenforcement.html>

Trading Standards and licensing enforcement complaints

<https://www.barnet.gov.uk/citizen-home/business/forms/Trading-Standards-Licensingenforcement-complaints.html>

Barnet Enforcement locations

<https://www.barnet.gov.uk/citizen-home/parking-roads-and-pavements/parking/moving-trafficcontraventions/driving-rules.html>