


<b>Cabinet Decision</b>  24 <sup>th</sup> April 2019	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Corporate Director Place	<b>Classification:</b> Unrestricted
<b>Corporate Enforcement Policy 2019</b>	

<b>Lead Member</b>	<b>Councillor Cllr David Edgar, Cabinet Member for Environment</b>
<b>Originating Officer(s)</b>	David Tolley – Head of Environmental Health and Trading Standards
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	17 January 2019
<b>Reason for Key Decision</b>	Significant impact on communities living or working in two or more wards
<b>Strategic Plan Priority / Outcome</b>	A Borough that our residents are proud of and love to live in. People feel safe in their neighbourhoods and anti-social behaviour is tackled.

## Executive Summary

On 8th September 2010, Cabinet agreed a council-wide Enforcement Policy. The Enforcement Policy is concerned with the Council's exercise of its criminal and quasi-criminal enforcement functions. Whilst some of the sanctions available to the Council are civil in nature, such as forfeiture of goods and money, the Enforcement Policy is not concerned with purely civil enforcement such as the enforcement of debts. Rather, it is concerned with offences and contraventions of legislation that fall within the Council's responsibility to enforce.

This report details proposed amendments to the Council's Enforcement Policy, the accompanying Regulatory Investigatory Powers Act ("RIPA") Policies for directed surveillance and the use of covert human intelligence sources.

The policies are being reviewed to take account of changes in legislation, including changes brought about by the Regulators Code.

## **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Consider the report and agree the proposed Enforcement Policy at Appendix 1.
2. Agree the revised Enforcement Policy along with the policies on the use of covert surveillance and the use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

### **1 REASONS FOR THE DECISIONS**

- 1.1 To ensure that the Council's enforcement decision making process is clear and transparent, embracing the Regulators Code.
- 1.2 The Council's policies need to reflect current changes to legislation and good practice, and to be reviewed regularly to be both relevant and up to date.

### **2 ALTERNATIVE OPTIONS**

- 2.1 The Council can choose not to update its Enforcement Policy but it may mean that formal enforcement action taken by officers fails.

### **3 DETAILS OF THE REPORT**

- 3.1 This Policy is being reviewed and revised to take account of changes in legislation and the introduction of the Regulators Code, which replaces the Regulators Compliance Code. The intention of the revised policy is to create a clearer, consistent approach covering all regulatory service across the Council. This also assists to enhance and formalise our joint working and partnership approach.
- 3.2 The Council-wide enforcement policy adopted by the Council on 8 September 2010 introduced five key principles of enforcement, in accordance with the provisions of the Legislative and Regulatory Reform Act 2006 and the Regulators Compliance Code namely –
  - **Raising awareness** of the law and its requirements.
  - **Proportionality** in applying the law and securing compliance.
  - **Consistency** of approach
  - **Transparency** about the actions of the Council and its officers.
  - **Targeting** of enforcement action.
- 3.3 The revised Policy takes account of the principles set out in the Regulators Code, which replaces the Regulators Compliance Code. The new code sets out 7 principles of enforcement as follows:

- **Raising awareness** of the law and its requirements and providing advice and guidance to assist those regulated
- **Proportionality** in applying the law and securing compliance
- **Consistency** of approach
- **Transparency** about the actions of the Council and its officers
- **Targeting** of enforcement action
- **Basing regulatory activities on risks**
- **Accountability**

3.4 The Council must have regard to this code when developing standards, policies or procedures that guide their regulatory activities. The specific regulatory functions which are carried out by the Council are set out in Part 3 of the schedule to the Legislative and Regulatory Reform (Regulatory Functions Order) 2007 and include the following:

- a) Agricultural
- b) Animal Health and Welfare
- c) Anti-Social behaviour
- d) Children
- e) Consumer and business protection
- f) Companies
- g) Education
- h) Entertainment
- i) Environment
- j) Food standards and safety
- k) Housing
- l) Intellectual property
- m) Licensing
- n) Public Health and Safety
- o) Road Transport
- p) Weights and measures

3.5 The main enforcement areas covered by the Council are as follows;

- Environmental Health, including Consumer Protection, Trading Standards, Health and Housing, Noise, enforcement in relation to premises required to be smoke free, Health and Safety, Food Safety, Licensing, special treatments enforcement, illegal tobacco
- Market enforcement, including unlicensed street trading
- Corporate anti-fraud, including benefit fraud, parking fraud and social housing fraud
- School attendance
- Planning
- Building Control
- Elections
- Environmental including fly-tipping, littering and ASB related activities.

3.6 The Enforcement Policy is concerned with the Council's exercise of its criminal and quasi-criminal enforcement function. The Policy will assist

Council officers to carry out their duties consistent with the principles of enforcement set out in the Regulatory Code. The Council's Enforcement Policy highlights that the Council's enforcement activities support the Strategic Plan priority of 'A Borough that our residents are proud of and love to live in ; ' People feel safe in their neighbourhoods and anti-social behaviour is tackled'.

- 3.7 Key Implications: The Council is responsible for enforcing a wide range of legislation within the London Borough of Tower Hamlets. The Corporate 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 prosecutions at one end of the spectrum to informal warnings and advice at the other
- 3.8 A revised 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 flexibility for each service area to develop its own enforcement mechanisms, taking on board the legal and operational differences between the service areas.

### **Changes in Legislation**

- 3.9 It is necessary to update the Council's current Enforcement Policy as there has been various changes in procedure and legislation that have taken place that need to be reflected in the refreshed policy.
- 3.10 Since the Policy was last reviewed the Regulators Code has come into effect. Consideration of the new Code would suggest that there should be seven principles relating to enforcement in place of the current five. The suggestion is to add the following two principles to reflect the regulators code:
- Accountability and
  - Enforcement based on risk
- 3.11 Since the change in legislation, enforcement activity has taken account of the additional two principles set out in the new Regulators Code, and the revised Enforcement Policy now reflects this.
- 3.12 The main suggested changes to the council-wide enforcement policy reflect the following:
- a) Regulators code
  - b) Changes to RIPA policies as a result of the changes introduced by the Protection of Freedom Act 2012
  - c) Primary Authority Partnership Scheme
  - d) Changes to procedures relating to anti -social behaviour brought about by the Anti-Social behaviour, Crime and Policing Act 2014
  - e) A suggestion that there should be 7 principles relating to enforcement in place of the current 5, as a consequence of the regulators code.

- 3.13 There are two RIPA Policies appended to the Council-wide Enforcement Policy. One relates to Directed Surveillance and the other one covers Covert Human Intelligence Sources. They have both been reviewed and amended to reflect changes brought about by the Protection of Freedoms Act 2012.
- 3.14 The Protection of Freedoms Act 2012 received Royal Assent on 1 May 2012. Sections 37 and 38 of the Protection of Freedoms Act amend Parts 1 and 2 of the Regulation of Investigatory Powers Act 2000 (“RIPA”) so as to require local authorities to obtain judicial approval for activities under RIPA. This means that before obtaining or disclosing communications data under Part 1 of RIPA, or conducting covert surveillance or using a covert human intelligence source under Part 2 of RIPA, the Council will require its own authorisation to be approved by a justice of the peace. This adds an extra layer of approval. The requirement for judicial approval to conduct covert surveillance, or use a covert human intelligence source, under Part 2 of RIPA came into force on 1 November 2012.
- 3.15 The Secretary of State has made the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources (Amendment) Order 2012, as permitted by the Protection of Freedoms Act 2012 which came into force on 1 November 2012. The order imposes additional conditions that a Local Authority authorisation of covert surveillance must meet. The Order restricts the Council’s use of covert investigation to the following offences –
- An offence punishable by a maximum term of at least 6 months of imprisonment.
  - An offence under section 146 of the Licensing Act 2003 (sale of alcohol to children).
  - An offence under section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children).
  - An offence under section 147A of the Licensing Act 2003 (persistently selling alcohol to children).
  - An offence under section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc. to persons under eighteen).
  - An offence under section 141A of the Criminal Justice Act 1988 (sale of knives and certain articles with blade or point to persons under sixteen)
  - An offence under Regulation 31 of the Pyrotechnic Articles (Safety) Regulations 2015 (prohibition on making fireworks & other pyrotechnic articles available to persons younger than the minimum age limit)
- 3.16 The Council’s RIPA policies are appended to the Enforcement Policy. The policies need to be amended to reflect the need to additionally obtain court approval and the limitation on the use of covert investigation to specified offences. A revised Enforcement Policy with is set out in Appendix 1 to this report.

## **4 EQUALITIES IMPLICATIONS**

- 4.1 An equalities impact assessment checklist has been undertaken and is attached at Appendix 2.

## **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration.
- 5.2 Best Value: The report assists with the regularising decision-making in areas in which the Council is already active. The enforcement policy seeks to ensure that enforcement action is targeted to the Council's policy objectives. This is likely to lead to efficient enforcement action than a less-controlled enforcement effort.
- 5.3 Environmental: The Enforcement policy seeks to support the strategic plan which promotes and improves the economic, social and environmental well-being of Tower Hamlets. The extent that the Enforcement Policy aligns enforcement action with the Strategic Plan will tend to promote sustainable action for the environment.
- 5.4 Risk Management: Enforcement action has a variety of inherent risks, including the potential for over or under-enforcement, discrimination, adverse cost orders and damage to the Council's reputation. The principles of enforcement contained in the policy provide a sound basis for decision-making that will reduce the likelihood of any adverse outcomes.
- 5.5 Crime reduction and Safeguarding: Enforcement in its broadest sense acts as a deterrent for crime and will therefore likely reduce all form of crime within the Borough. The Enforcement Policy sends a clear message to the perpetrator whilst supporting the victim, that the Council will undertake enforcement where necessary.

## **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 This is a report of the proposed revised Enforcement Policy along with policies on the use of covert surveillance and the use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.
- 6.2 There are no financial implications arising from the recommendations in this report however the enforcement policies are designed to meet the Council's requirements to minimise the risk of fraud, error and omission to Council's services, finances and assets.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 The Regulators' Code (the Code) came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006. It provides a clear, flexible and principle-based framework for how regulators should engage with those they regulate.
- 7.2 The Council is obliged to have regard to the Code when developing policies and operational procedures that guide the council's regulatory activities including enforcement action.
- 7.3 If the Council concludes, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, the Council is not bound to follow that provision but should record that decision and the reasons for it.
- 7.4 One of the requirements of the Code is that Regulators should provide a clear Enforcement and Prosecution Policy that sets out our approach to enforcement and outline that the council will take a consistent, fair, transparent and proportionate approach so as not to place too onerous a burden on local businesses, organisations, customers and the public. The Policy should be available to businesses & members of the public.
- 7.5 Although, the preparation and publishing of the policy is not in itself a legal requirement. However, if the Council does not adopt a revised Enforcement Policy and there is no common reference point, there is a risk that the principles are inconsistently applied across different service areas. This might increase the risk of legal challenge and reduce the fairness and effectiveness of the Council's approach to enforcement. The adoption of a policy is considered to be best working practice and will also assist the both Councils to demonstrate that it has regard to the Code.
- 7.6 In relation to prosecutions, the Council is required to follow the provisions of the Code for Crown Prosecutors, which have been incorporated into this Corporate Enforcement Policy.
- 7.7 In addition, the Council must have due regard to the Public Sector Equality Duty under the Equality Act 2010 when carrying out any functions including developing any policies that may have any effect on any protected persons, in particular the duty to eliminate discrimination, harassment and victimisation and advance equality of opportunity and fostering good relations.
- 7.8 The Council also have a duty under the Human Rights Act 1998, when carrying out any function, not to act incompatibly with rights under the European Convention for the Protection of Fundamental Rights and Freedoms.
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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE

### **Appendices**

Appendix 1: Enforcement Policy 2019

Appendix 2: Equality Impact Checklist

### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- NONE

### **Officer contact details for documents:**

Or state N/A