

Agenda Item No:

Report To: Cabinet

Date of Meeting: 27th July 2023

Report Title: Corporate Enforcement Statement 2023

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Portfolio Holder: Cllr. Liz Wright
Portfolio Holder for: Communities and Health

Cllr Steve Campkin
Climate Environment and Transport



Summary:

This report presents an updated Corporate Enforcement Statement. Setting out the Council's overarching approach to enforcement and implementing best practice as set out in the Regulators Code.

Key Decision: YES

Significantly Affected Wards: All

Recommendations: **The Cabinet is recommended to:-**

- I. Agree the Corporate Enforcement Statement for publication on the Council's website.**

Policy Overview: The Corporate Plan 2022-24 ambition for Ashford where by the Council is committed to growing the local economy and enabling local residents to live well in caring, clean communities. The Corporate Enforcement Statement supports this ambition by clearly setting out how we will take action within our powers, to deal with breaches of legislation and regulation.

Financial Implications: None

Legal Implications: Regulators whose functions are specified by order under section 24(2) of the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended) must have regard to the Code when developing policies and operational procedures that guide their regulatory activities.
Text agreed by Solicitor to the Council and Monitoring Officer on 23/05/23

Equalities Impact Assessment: Not Required because this is an overarching statement of how the Council will approach its enforcement duties. EIAs

will be undertaken for specific Enforcement Policies.

**Data Protection
Impact
Assessment:**

Any data collected in the course of taking enforcement action will be collected in accordance with GDPR.

**Risk Assessment
(Risk Appetite
Statement):**

Failure to adopt a Corporate Enforcement Statement could open the Council up to challenge if not seen to be complying with the Regulators Code 2014 or recording the reason why the Code is either not applicable or is outweighed by another relevant consideration.

**Sustainability
Implications:**

The Corporate Enforcement Statement is an overarching document and supporting the delivery of service specific enforcement policies which may have positive sustainability outcomes as a result of enforcement action such as environmental and social benefits from reduced littering/fly-tipping and improved housing conditions.

**Other Material
Implications:**

None

**Exempt from
Publication:**

NO

**Background
Papers:**

Regulators Code 2014
<https://www.gov.uk/government/publications/regulators-code>

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Report Title: Corporate Enforcement Statement 2023

Introduction and Background

1. The Regulators Code was introduced in 2014. This requires those organisations with a regulatory function under section 24(2) of the Legislative and Regulatory Reform Act 2006 to have regard to the Code and uphold its principles.
2. In 2016 the Council set out its approach to enforcement in its policy on the use of enforcement powers (Cabinet agenda item 9, 12 May 2016). This policy stated the Council's commitment to take enforcement matters and compliance with legal regulations or conditions seriously and take appropriate action whenever it is justified.
3. The Regulators Code has 6 principles:
 - 1) Regulators should carry out their activities in a way that supports those they regulate to comply and grow
 - 2) Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
 - 3) Regulators should base their regulatory activities on risk
 - 4) Regulators should share information about compliance and risk
 - 5) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
 - 6) Regulators should ensure that their approach to their regulatory activities is transparent

Proposal

4. This report presents an updated Corporate Enforcement Statement, (appendix 1) which reiterates how the Council aims to undertake its enforcement duties in a way that is, transparent, accountable, proportionate, consistent and only targeted at cases where action is needed.
5. The Corporate Enforcement Statement reaffirms the Council's intent to have regard to the Regulators Code when developing enforcement policies and operational procedures that guide our regulatory activities.
6. Where an enforcement policy or procedure deviates from the Regulators Code / Corporate Enforcement Statement due to legislative requirements of that specific area of enforcement then the policy will take precedence.

Equalities Impact Assessment

7. An EIA is not required due to the Corporate Enforcement Statement being an overarching document setting out the Council's approach to enforcement with regard to the Regulators Code.
8. Where service specific enforcement policies are required and EIA will be undertaken for each policy.

Consultation Planned or Undertaken

9. There is no valid reason to consult on The Corporate Enforcement Statement as it purely sets out the intentions of the council, as a Regulator, to follow the Regulators Code and where if necessary and deemed appropriate to deviate from The Code as provided for in The Code.

Next Steps in Process

10. Cabinet agree the Corporate Enforcement Statement.
11. Following agreement the Corporate Enforcement Statement will be published on the Ashford Borough Council website.

Conclusion

12. Adopting a refreshed Corporate Enforcement Statement will reiterate the council's approach to taking fair, proportionate and transparent action when there are breaches of legislation or regulation that the council is responsible for upholding.

Portfolio Holder's Views

13. The council is committed to growing the local economy and enabling local residents to live well in caring, clean communities. When individuals or businesses flout regulations that have been put in place to protect all citizens the council will take a robust approach to enforcement.
14. Acting consistently in accordance with the Regulators Code ensures, where necessary, we can take action and bring those who breach regulations to account.

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Corporate Enforcement Statement 2023

July 2023

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1. Introduction

The Corporate Plan 2022-2024 sets out the ambition for the borough to 2030:

To be a thriving, productive and inclusive borough in 2030 and beyond; a vital part of Kent and the South East where local businesses, social enterprises, communities and the public sector provide collective leadership to promote shared prosperity, happiness and wellbeing.

The council is committed to growing the local economy and enabling local residents to live well in caring, clean communities. At times there will be individuals or businesses that flout the regulations that have been put in place to protect all citizens. Where necessary, and within our powers, the council will take action to deal with such issues.

In its role as a regulator, the council will apply the principles of the Regulators Code as set out in the Legislative and Regulatory Reform Act 2006. Regulators whose functions are specified by order under section 24(2) of the Act must have regard to the Code when developing policies and operational procedures that guide their regulatory activities. This means we aim to take a fair and proportionate approach that is efficient and effective. Our intention is to improve the outcome of regulation and not to place unnecessary burdens on individuals or businesses.

This statement sets out the approach to be taken by authorised officers when undertaking enforcement duties. The Council is committed to services which are courteous and helpful and seeks to work with individuals and businesses, wherever possible, to help them comply with the law. The Council expects all officers making enforcement decisions to use this statement as a guide in addition to any relevant service specific policies there are in place at the time of the enforcement action.

Should there be any conflict between this statement, a service specific policy and/or a legal requirement then the legal requirement and service specific policy will take precedence.

2. Legislative Framework

The Council will have regard to the provisions of the Regulators Code when exercising specified functions under the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended). The services falling within the scope of this statement include:

- Anti-social behaviour
- Waste and Street Scene
- Environmental Protection
- Food safety
- Health and Safety
- Housing
- Licensing
- Public Health

The Council aspires to any person exercising regulatory functions will carry out those functions in a way that are:

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted only at cases in which action is needed.

The Regulators Code has 6 principles that the Council will have regard to:

- 1) Regulators should carry out their activities in a way that supports those they regulate to comply and grow
- 2) Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
- 3) Regulators should base their regulatory activities on risk
- 4) Regulators should share information about compliance and risk
- 5) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- 6) Regulators should ensure that their approach to their regulatory activities is transparent.

In certain instances, we may conclude that the provision of the Regulators' Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

The Council also supports all the principles that are contained within the following legislation:

- The Data Protection Act 2018
- The Human Rights Act 1998
- The Regulatory and Investigatory Powers Act 2000
- The Protection of Freedoms Act 2012

The council may also take enforcement action regarding breaches of planning policy and fraudulent benefit claims;

In relation to Town & Country Planning, the enforcement regime is governed by the Town & Country Planning Act 1990. The Council's policy in relation to such enforcement is addressed in the Council's Planning: Local Enforcement Plan (Updated October 2016).

https://www.ashford.gov.uk/media/fsggfrax/planning-enforcement-policy_october-2016.pdf

Benefit fraud is investigated by the Council's Corporate Fraud Investigation Service. This covers areas such as Housing Benefit fraud, Social Housing fraud and, Council Tax fraud. More information is available at <https://www.ashford.gov.uk/benefits/fraud/>

3. Enforcement

There are 3 stages to taking enforcement action:

- Investigation
- Assessment
- Action

The Council will endeavour, wherever possible, to resolve issues through advice and guidance. Depending on the nature, severity and frequency of the offence the Council will not hesitate to take enforcement action which is risk based and proportionate to the offence. Where a service specific policy includes additional or alternative enforcement stages these will be taken in accordance with that policy.

The Council will work together with other agencies to investigate, assess and where necessary take enforcement action. In addition the Council recognises the role it can play in supporting other agencies, such as the Environment Agency to take action where the offence falls within their remit and will share information that may lead to enforcement action being taken.

4. Complaints

Complaints will be dealt with through the Council's formal complaints procedure.

<https://www.ashford.gov.uk/contact-us/complaints/formal-complaints-procedure/>

If there is an alternative route for complaints and /or an accountable body (such as an ombudsman) this will be set out in the relevant policy.

5. Review

This Corporate Enforcement Statement will be reviewed every 3 years or sooner if there are changes to the Regulatory Code or other relevant legislation.

6. Ashford Borough Council Enforcement Responsibility

The table below shows the areas where the council has a responsibility to take action against breaches of regulations or legislation. This may be direct action or in cooperation with or on behalf of other public agencies.

Directorate	Service/Team	Areas of Enforcement Responsibility	
Chief Executive	Policy	Corporate Enforcement Statement	
Place, Space and Leisure	Environment, Property and Recreation	Fly Grazing on ABC Land	
		Stray Dogs	
Health and Wellbeing	Safety and Wellbeing	Public Spaces Protection Orders	
		Noise	
		Pollution	
		Private Water Supplies	
		Taxi Licensing	
		Licensing Street Trading	
		Licensing Act	
		Gambling	
		Fly Tipping	
		Littering	
		Dog Fouling	
		Public Health including Infectious Diseases and Skin Piercing	
		Food Safety	
		Animal Licensing	
		Council's on and off-street Parking Enforcement	
		Abandoned Vehicles	
		Contaminated Land	
	Health and Safety at Work		
		Safety and Wellbeing / Housing	Anti-Social Behaviour
		Housing	Rent Arrears
	Private Sector Housing Enforcement		
Customer, Technology and Finance	Finance and IT	Anti-Fraud Strategy	
		Anti-Money Laundering	
	Revenues and Benefits	Corporate Debt Recovery	