

Cabinet	Agenda Item: 10
Meeting Date	16 December 2020
Report Title	Overarching enforcement policy
Lead Member	Councillor Roger Truelove - Council Leader
SMT Lead	David Clifford - Head of Policy, Communications and Customer Services
Head of Service	
Lead Officer	Bob Pullen - Policy and Performance Officer
Key Decision	No
Classification	Open
Forward Plan	Reference number:
Recommendations	1. Adopt the overarching enforcement policy at Appendix I.

1. Purpose of Report and Executive Summary

- 1.1. The Council's existing enforcement policy was published many years ago and is now out of date and needs to be replaced. A new overarching enforcement policy has been developed and the purpose of this report is to seek Cabinet endorsement of the new policy.

2. Background

- 2.1. The Council discharges a range of functions that involve enforcement activity including:
- Community safety;
 - Environmental health;
 - Environmental response;
 - Housing;
 - Licensing;
 - Parking; and
 - Planning.
- 2.2 It is good practice for the Council to have a single overarching policy in place that helps to promote efficient and effective approaches to regulatory inspection and enforcement as a means of improving regulatory outcomes without imposing unnecessary burdens. Councils are encouraged to comply with the Regulators' Code.

- 2.3 The policy sets out the principles of good regulation (consistent, targeted, transparent, accountable, proportionate and helpful) which will be applied to all of the Council's enforcement activity.

3. Proposals

- 3.1 The policy is intended as an umbrella policy and applies to all service areas of the Council with enforcement responsibilities.
- 3.2 The policy sits above all of the service-specific policies which the Council is responsible for discharging. The policy therefore sets out a short and succinct statement of what those who are on the receiving end of enforcement action should expect from the Council in how it discharges its responsibilities.

4. Alternative Options

- 4.1. The alternative options are to leave the existing policy in place or to simply not have an overarching enforcement policy. The former was discounted as the Council would not be compliant with the Regulators' Code. The latter was also ruled out for the same reason, plus each individual service-based policy would need to replicate the same wording requiring them all to be reviewed, revised and approved, even where the policies were up to date.

5. Consultation undertaken or proposed

- 5.1 Heads of Service and the team leaders responsible for discharging enforcement functions were consulted a number of times during the development of the revised policy. Mid Kent Legal Services played an active role in the drafting of the policy.
- 5.2 The policy was considered by Policy Development and Review Committee on 26 November. In addition, the policy has been written to be compliant with the Regulators' Code April 2014.
- 5.4 The policy relates to a number of Cabinet members responsibilities and so is very much in the 'cross-portfolio' category which falls to the Council Leader. He and the other Cabinet members with responsibilities in this area were consulted on the revised policy before it is formally submitted to Cabinet for approval.

6. Implications

Issue	Implications
Corporate Plan	The policy aligns with several objectives in the adopted corporate plan 2020-2023
Financial, resource and property	None identified at this stage.
Legal, statutory and procurement	The policy is intended to ensure that regulatory inspection and enforcement is carried out in a fair, practical and consistent manner. It is good practice to have this in line with the Regulators' Code, which sits under the Legislative and Regulatory Reform Act 2006. Mid Kent Legal Services have been instrumental in the development and drafting of the new policy.
Crime and disorder	The policy makes clear that enforcement activity is targeted on those whose activities give rise to the most serious offences.
Climate and ecological emergency	Environmental response is one of the Council's key means of keeping the borough clean and enforcement activity is a primary means of achieving this.
Health and wellbeing	None identified at this stage.
Risk management and health and safety	None identified at this stage.
Equality and diversity	None identified at this stage.
Privacy and data protection	None identified at this stage.

7. Appendices

7.1. The following documents are to be published with this report and form part of the report:

- Appendix I: Overarching enforcement policy

8. Background Papers

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

Swale Borough Council Overarching Enforcement Policy

1 - Introduction

- 1.1 This overarching enforcement policy is an umbrella policy and applies to all service areas. Extra requirements can apply to specific enforcement activities such as health and safety, licensing, planning and parking services.
- 1.2 Detailed service-specific policies and procedures, where needed, are held, updated and reviewed by the relevant service. Information about these may be obtained directly from that service.
- 1.3 This policy helps to make sure that regulatory inspection and enforcement is carried out in a fair, practical and consistent manner.
- 1.4 This policy has been written in accordance with the Regulators' Code April 2014 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf. In certain circumstances we may conclude that a provision in the 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 and based on evidence.

2 - Council aim and vision

- 2.1 Swale Borough Council has set out its strategic aims and vision in the Corporate Plan and the enforcement services of the Council carry out their duties in support of these. The specific aims that relate to enforcement services are found in service plans together with the core enforcement activities of the service.
- 2.2 Good regulation and enforcement helps to support the local economy and a safer and more enjoyable environment for residents.

3 - Principles of good regulation

Proportionality

- 3.1 The principle of proportionality is that enforcement action taken against a person, organisation or business is suitable and appropriate in the circumstances. It should also justify the level of resources to be implemented taking into account factors such as interests, resources and objectives.

- 3.2 To achieve proportionality, Swale Borough Council will carefully consider all the issues relevant to an enforcement matter. This could include issues such as the seriousness of the offence, the offender's circumstances, the interests and safety of the public and environment.
- 3.3 In all cases, Swale Borough Council will follow the relevant guidance to deliver best practice.

Consistency

- 3.4 Swale borough council will carry out enforcement action in a fair and consistent manner in accordance with its policies and procedures. Similar approaches will be taken in similar circumstances to achieve similar ends, although each case will be assessed on its own merits. The willingness to comply and co-operation of the person, organisation or business subject to enforcement action may also be taken into account in deciding how and what enforcement action should be taken.

Targeted

- 3.5 Targeting means making sure that enforcement activity is targeted on those whose activities that give rise to the most serious offences. It also means that any enforcement action is focused on those with a duty imposed on them by Statute and where as a result of their breach of duty any offences committed by others are likely to be facilitated.
- 3.6 Any enforcement action will be targeted against the person, organisation or business who is under a duty, such as employers, employees, owners of premises, householders, self-employed persons, or individual members of the public.

Transparency

- 3.7 Transparency is important in maintaining public confidence in our capability. We will help those being regulated to understand what they need to do and how they can achieve compliance. In all matters the various enforcement teams will also clearly identify themselves and their role.
- 3.8 Swale enforcement officers will explain carefully (if necessary in writing) why the action is necessary, who must carry it out, and by what date it must be carried out.
- 3.9 Where appropriate, Swale Borough Council will give reasonable opportunity for discussion before formal enforcement action is taken. Where it is appropriate but not possible, we will give a written explanation of our reasons for taking immediate action and this will be done as soon as practicable.
- 3.10 Information and advice will be provided in language or in a format which is easy to understand.

Accountability

- 3.11 Swale Borough Council is accountable to the public for its actions. This means we must have policies and standards which are easily accessible and understood, and effective and easily accessible mechanisms for dealing with comments and handling complaints.
- 3.12 Swale Borough Council has an internal procedure for dealing with complaints against its services. Details are available on the Council's website <https://www.swale.gov.uk/compliments-and-complaints/>. In addition to Swale Borough Council's own complaints procedures, the Local Government Ombudsman hears complaints regarding local government maladministration, and details of this service are also available from the council.
- 3.13 Where a right of appeal is applicable we will give out information on how to do this with the statutory notices or warnings served by us.

Helpfulness

- 3.14 Our staff will deal courteously and efficiently with all people, organisations and businesses they come into contact with. Staff will, in the usual course of events, identify themselves by name, and contact numbers will be made available as soon as practicable after the event. We will communicate by email where this is possible and preferable.