

<b>Meeting:</b>	Executive
<b>Meeting date:</b>	12 September 2024
<b>Report of:</b>	Ian Floyd Chief Operating Officer
<b>Portfolio of:</b>	Councillor Claire Douglas Leader of the Council and Executive Member for Policy, Strategy and Partnerships

## Enforcement Policy

### Subject of Report

1. The report proposes a new enforcement policy ('the policy') for the council. It is intended to apply to almost all council services, therefore having a much wider scope than the existing policy which applies to the council's public protection, housing and community safety services. Other services currently follow their own specific guidelines when considering formal enforcement action.
2. The policy sets out the general principles officers will apply to achieve compliance with the wide variety of legislation enforced. As a general rule, officers will seek to ensure compliance through advice and guidance. However, the policy sets out instances where a firmer stance, including prosecution, may be considered more appropriate even in the first instance.
3. Where appropriate, the policy will be underpinned by specific procedures detailing *how* officers undertake the various aspects of enforcement. Whilst the procedures do not form part of the policy itself (and are not part of this report), the policy will help shape those procedures and therefore the way in which officers undertake their specific enforcement duties.

## Benefits and Challenges

4. The key benefit of the policy is that it will guide officers and ensure a consistent approach across all enforcement activity undertaken by the council for the benefit of all our communities including businesses and other organisations, residents and visitors. Furthermore, its format is such that the council can readily demonstrate how it is meeting its obligations under the Regulators' Code for its regulatory functions such as planning, building control, licensing, environmental health and trading standards. The policy is designed to overcome challenges (legal or otherwise) that action taken by officers is unfair and/or is otherwise in accordance with principles agreed by members. Under the council's constitution, officers may take enforcement action in line with an approved enforcement policy.

## Policy Basis for Decision

5. Adopting the new enforcement policy will support the following council plan priorities:
  - priority a) **Health and wellbeing**: A health generating city, for children and adults
  - priority b) **Education and skills**: High quality skills and learning for all
  - priority c) **Economy and good employment**: A fair, thriving, green economy for all
  - priority d) **Transport**: Sustainable accessible transport for all
  - priority e) **Housing**: Increasing the supply of affordable housing
  - priority f) **Sustainability**: Cutting carbon, enhancing the environment for our future
  - priority g) **How the council operates**

Furthermore, as highlighted in the implications section of the report, the policy supports the administration's four commitments to **Affordability; Environment; Equalities and Human Rights; and Health Inequalities**

## Financial Strategy Implications

6. The policy is aimed at ensuring compliance primarily through advice and guidance in recognition that preventing issues arising is likely to be more cost effective than reacting to problems that have

- arisen. Where formal enforcement action results in a sanction which generates income, such as a fixed penalty ticket, the primary purpose is to encourage compliance/dissuade non-compliance and not to provide additional income to the council.
7. The level and manner of enforcement activity is dependent upon the resources including officers and equipment available to a particular service. As will be seen, the policy ensures officers deploy those resources where they are most effective when designing procedures and planning enforcement activity.

## **Recommendation and Reasons**

8. That the Executive adopt the policy in order to guide officers and ensure a consistent approach when enforcement activity is undertaken by the council.

## **Background**

9. At the Decision Session - Executive Member for Economy and Strategic Planning on Tuesday, 23 November 2021, the Executive Member considered a report on the Public Protection, Housing and Community Safety enforcement actions. It was decided to 'approve a review of the policy, with appropriate consultation with the public and businesses, in 2022'.
10. A copy of the proposed policy can be found in **Annex A**. It sets out (amongst other things): An introduction to the aims of the policy, how we support compliance, provide advice and guidance, conduct inspections and visits, deal with non-compliance and the circumstances in which we take formal enforcement action. It also sets out how we provide transparency for our actions and provide an annual review of the activity undertaken.

## **Consultation Analysis**

11. In April 2022, a working group of service managers/subject leads from across the council began a review of the existing enforcement policy including its scope. To simplify matters, it was decided to explore having an enforcement policy covering (almost) all council enforcement activity. NB The reasons behind some services remaining outside of the scope of the policy are detailed below.
12. A public consultation followed with particular focus on the issues which may trigger formal enforcement action in the first instance. The results of this consultation were added to views of the service

managers/subject leads. The policy was then drafted by officers/service leads into its current format, and a final consultation of the complete draft policy was undertaken between December 2023 and February 2024. In the final consultation, a number of partners, business groups and other groups including the York Access Forum were specifically approached for comments. Changes made to the policy following the consultation are highlighted in red.

## **Options Analysis and Evidential Basis**

13. There were 168 responses to the consultation and majority of respondents were supportive of the proposals. Of those respondents identifying themselves, 30.6% were businesses trading in the City of York, and 38.9% were residents of York. The analysis below provides a short summary of the responses, and highlights any changes made to the policy as a result of the feedback received.

### **Scope of the policy/Excluded services (Section 1.0 of the policy, Question 2 of the consultation)**

14. As noted, all council enforcement functions are intended to be covered by the policy apart from those listed in its Appendix 1, namely:
- Fraud against the council – Any fraud committed against the council is covered by the council’s Counter Fraud and Corruption Policy. These are investigations conducted by Veritau.
  - National Trading Standards – This is a national team grant funded by Government to tackle high level consumer fraud occurring across regions or across the country. It is tasked investigations by other Local Authority trading standards services and other organisations such as the Advertising Standards Agency to investigate and take action in accordance with a separately approved enforcement policy for that purpose.
  - Please note that the draft policy which was consulted upon, ‘Non-payment of council tax, business rates, sundry debts including housing benefit overpayment and adult social care and recovery of government grant (revenues)’ was proposed as an exclusion.

15. Most of the respondents (59.4%) agreed with the scope of the policy. However, a number of comments came in relation to the exclusions i.e. that these services should be included within scope. As a result of the feedback, and further discussion with service managers, 'non-payment of council tax etc.' has been brought into scope and is included in the policy. The other two exemptions i.e. 'fraud against the council' and 'National Trading Standards investigations' remain exempt. In the former case, the separate processes apply as council is effectively the victim in these matters. In the latter, the council is specifically tasked/funded to carry out a course of action, such as a prosecution, on behalf of another Local Authority anywhere in England and Wales or another organisation and it is not appropriate to be bound by a local policy.

**Aims of the policy (Section 1.0 of the policy – Question 3 of the consultation)**

16. The aims the council is trying to achieve through the policy were supported by majority of respondents (83.3%). There were various comments received which mainly related to considerations for officers to 'have in mind' when applying the aims. However, as a result of the feedback received, the specific aim of 'safeguarding vulnerable adults' has been added.
17. Furthermore, as the policy now also includes 'Non-payment of council tax, business rates, sundry debts including housing benefit overpayment and adult social care and recovery of government grant (revenues)' this has been added as a specific aim.

**Definition of formal enforcement action (Section 1.0 of the policy – Question 4, 5 and 6 of the consultation)**

18. Over three quarters of respondents (78.8%) agreed with list of actions defined as 'formal enforcement action' within the policy. Most of the comments received in relation to what should be added related to specific activity individual respondents would like to see taking place (which is intended to be dealt with by the underlying procedures). There were also some individual comments as to what should be excluded from the definition of formal enforcement action, but as no clear themes emerged through the feedback no other changes have been made.

### **Supporting compliance (Section 2.0 of the policy - Question 7 of the consultation)**

19. Most of the respondents (74.8%) agreed with the principles for supporting compliance. There were a number of individual comments in the feedback including suggestions of practical ways that officers could provide support more effectively which has been shared with service managers.

### **Advice and guidance – (Section 4.0 of the policy - Question 8 of the consultation)**

20. Most of the respondents (76.3%) agreed with the principles upon which advice and guidance should be given. Much of the feedback related to how the advice should be given including that it is clear. There were also some comments around ensuring clarity of fees and whether or not advice should be free. There have been no changes to the policy made, however the feedback has again been shared with service managers.

### **Inspections and visits (Section 5.0 of the policy - Question 9 of the consultation)**

21. Most of the respondents (80.3%) agreed with the principles for undertaking inspections and visits. The feedback included a number of comments that the results of inspections and visits should be automatically put into the public domain. However, given the strength of agreement with the principles no changes have been made i.e. the policy states that the reports from inspections and visits may be made available through a freedom of information/environmental information requests.

### **Non-compliance (Section 6.0 of the policy - Question 10 of the consultation).**

22. Most respondents (77.8%) agreed with the principles for dealing with non-compliance. However, to accommodate the debt collection process. The section has also been amended to highlight that visits by enforcement officers/agents to enforce debts may not result in a written explanation of what was wrong or confirmation that matters are closed (communications in relation to debts are made in accordance with distinct processes).

**Formal enforcement action – (Section 7.0 and Appendix 2 of the policy - Questions 11 and 12 of the consultation)**

23. Most respondents agreed with the staged approach proposed (87.1%). There was also strong support from respondents (80.3%) for the situations that may result in formal enforcement action - even in the first instance - as listed in Appendix 2 of the policy. The policy is clear that formal enforcement action may also be considered 'where previous advice or warnings have been ignored or in other situations where the Director of Governance (in discussion with the relevant officer) considers it appropriate. This will include, but is not limited to, those who appear to be deliberately breaking the law or acting irresponsibly and it is in the public interest to take such an approach'. Following further feedback from a service manager, the example of 'waste presentation' given as an offence for which a fixed penalty ticket may be issued has been changed to 'littering' as it is a more accurate example.
24. There were a number of comments relating to issues for which formal enforcement action was particularly supported. These included comments from the York Access Forum (and others) about the importance of keeping pavements/walkways clear. This information has been passed on to service managers.

**Considerations before formal enforcement action (Section 7.0 of the policy - Question 13 of the consultation)**

25. Most respondents (86.6%) agreed with the factors that will be taken into consideration prior to formal enforcement action being taken. The comments included that the considerations should aim to 'prevent' rather than 'deter' non-compliance occurring and has been amended accordingly.

**Allocation of resources based on risk – (Section 8.0 of the policy - Question 14 of the consultation)**

26. Most respondents (86.6%) also agreed with the principle that enforcement resources will be deployed where they will be most effective in addressing the risks concerned. Feedback included comments that officers must have an understanding of the impact of non-compliance on different groups e.g. disabled and vulnerable groups to ensure risks are not overlooked when planning where to deploy resources. This has been fed back to service managers to

consider when devising/reviewing the underlying procedures detailing *how* enforcement is conducted.

**Sharing information, transparency, departure from and review of the policy (Section 9.0, 10.0 and 11.0 of the policy - Questions 15, 16, 17 and 18 of the consultation)**

27. Most respondents (79.1%) agreed with the principles upon which officers will ask for information, ensure transparency (90.9%), depart from the policy (82.3%) and review periods (87.9%). There were very few comments in relation to any of these aspects.

## **Organisational Impact and Implications**

28. The bullet points below highlight the various impacts and implications arising from adopting the policy:
- **Financial, comment from Director of Finance:** As no additional costs will be incurred as a result of this policy, there are no financial implications associated with this report.
  - **Human Resources (HR), comment on behalf of the Head of HR:** There are no HR implications associated with this report.
  - **Legal, comment from Head of Legal Services:** Pursuant to the Legislative and Regulatory Reform Act 2006, Local Authorities must have regard to the Regulator's Code when developing policies and procedures that guide their regulatory activities. The principles of the Act are that regulatory activities should be carried out in a way which is a) transparent, accountable, proportionate and consistent; and b) targeted only at cases in which action is needed. The draft policy promotes those principles. Most enforcement action carried out by the Council is discretionary. This means it has a power but not a duty to enforce. This leaves significant flexibility to target enforcement activity.
  - **Procurement, comment from the Head of Procurement:** Whilst there are no direct procurement implications relating to the Enforcement Policy itself, should any requirements need to be outsourced, all works and/or services must be procured via a compliant, open, transparent, and fair process in accordance with the council's Contract Procedure Rules and where applicable, the Public Contract Regulations 2015 (soon to be Procurement Act 2023). Further advice regarding the procurement process and development of procurement



strategies must be sought from the Commercial Procurement team.

- **Health and Wellbeing, comment on behalf of the Director of Public Health:** As described in the report, one of the policy's aims is to 'help people to live healthier lives by preventing ill health and harm, and promoting public health'. The policy will provide consistency of approach across the council, allowing a structured way for departments to provide advice and guidance, inspections and enforcement actions. Public Health strongly supports the situations outlined in Annex 2, where enforcement action may be taken even in the first instance of non-compliance.
- **Environment and Climate action, comment from the Head of Carbon Reduction:** As described in the report, the policy is aimed at improving the environment and climate action. One of the policies aims is to 'protect the environment for future generations including tackling the threats and impacts of climate change'
- **Affordability, comment from Director of Customer and Communities.** The policy has a positive impact on affordability and low income groups in a number of ways. For example, to 'help people to live healthier lives by preventing ill health and harm, and promoting public health', 'improve housing conditions and raise the standard of management in the private rented sector' and 'to provide safer, healthier, affordable and warmer homes in the private sector'. There are numerous examples where formal enforcement action may be taken in the first instance to help protect those on low incomes such as 'poor health and safety in private rented homes', 'illegal evictions'.
- **Equalities and Human Rights, comment from Access Officer.** An equalities impact assessment is attached at **Annex B.**
- **Data Protection and Privacy, comment from Information Governance and Feedback Team Manager**  
Data protection impact assessments (DPIAs) are an essential part of our accountability obligations and is a legal requirement for any type of processing under UK data protection and privacy legislation. Failure to carry out a DPIA when required may leave the council open to enforcement action, including monetary penalties or fines.

DPIAs helps us to assess and demonstrate how we comply with all our data protection obligations. It does not have to eradicate all risks but should help to minimise and determine whether the level of risk is acceptable in the circumstances, considering the benefits of what the council wants to achieve.

The DPIA screening questions were completed for this report and as there is no personal, special categories or criminal offence data being processed for the options set out in this report, there is no requirement to complete a DPIA for the policy itself. However, there will be a need for service areas to review or complete a DPIA for their enforcement activities to comply with the option approved.

- **Communications, comment on behalf of the Head of Communications:** Communications implications include ensuring this policy is communicated to council staff and, where relevant, referring to it in press releases following court cases / sentencing.
- **Economy, comment from the Head of City Development:** As set out in the report, one of the policy aims is to ‘support economic growth, especially in local businesses, by ensuring a fair, responsible and competitive trading environment’. When consulted in the past, businesses have indicated strongly that they wish enforcement to be fair and consistent and see the action that the Council takes to ensure a level playing field as a positive measure.

## Risks and Mitigations

29. The council has existing enforcement policies in place for its various enforcement activities. Applying the scoring from the council’s risk matrix the impact of action in a national court and national media coverage as a result of our enforcement action being challenged would be a ‘major’ impact, although as a result of the existing policies the likelihood of any challenge being successful is ‘unlikely’. This gives a risk score of ‘18’ which is an ‘orange risk’. However, in setting an agreed framework against which all enforcement activity is based to help ensure consistency of approach, and reconsidering the situations in which formal enforcement action may be considered in the first instance means that the likelihood of a successful challenge in a national

court/adverse national publicity is 'remote'. This reduces the risk score to '12' and is a 'yellow risk' on the council's risk matrix.

## Wards Impacted

30. All wards may be impacted by this decision.

## Contact details

For further information please contact the authors of this Decision Report.

### Author

<b>Name:</b>	James Gilchrist
<b>Job Title:</b>	Director of Environment Transport and Planning
<b>Service Area:</b>	Council wide
<b>Telephone:</b>	01905 552547
<b>Report approved:</b>	Yes
<b>Date:</b>	28/06/2024

### Co-author

<b>Name:</b>	Matt Boxall
<b>Job Title:</b>	Head of Public Protection
<b>Service Area:</b>	Public Protection
<b>Telephone:</b>	01904 551528
<b>Report approved:</b>	Yes
<b>Date:</b>	28/06/24

## Background papers

Existing enforcement policy for Public Protection, Housing and Community Safety

<https://www.york.gov.uk/downloads/file/98/cyc-public-protection-housing-and-community-safety-enforcement-policy>

Responses to the consultation and businesses/organisations approached for specific comments.

<https://data.yorkopendata.org/dataset/enforcement-policy-consultation-2024>

## **Annexes**

Annex A – The Policy and its Appendices 1 and 2

Annex B – Equalities impact assessment