
Executive

28 September 2017

Portfolio of the Executive Member for Culture, Leisure & Tourism

Report of the Director of Economy and Place

Update on Formal Enforcement Action and Review of Enforcement Policies

Summary

1. The purpose of this report is to enable the Executive Members to review the formal enforcement action as well as the surveillance activity undertaken in 2016-17 by:-
 - Public Protection (Environmental Health, Trading Standards and Licensing)
 - Housing Services
 - Community Safety
 - National Trading Standards Regional Investigation and National Trading Standards eCrime teams (previously Scambusters and eCrime)
2. The report also asks members to consider updating the enforcement policies used by the above teams. Please note: Public Protection, Housing and Community Safety have one policy and the National Trading Standards teams have a separate policy. Furthermore, these policies do not cover the activities of Planning as well as Transport and Highways (which includes parking services) as these are subject to their own enforcement guidelines.

Recommendations

3. That the Executive Members approve the report, and the changes to the enforcement policies.

Reason: To provide oversight to the formal enforcement activity in 2016-17 (including surveillance activity), and introduce updated policies addressing current issues and other administrative changes.

Background

Formal enforcement Action Taken

4. This report details the results of formal enforcement action taken in the period specified. Each case is considered on its merits before legal proceedings are instituted. Annex A summarises the action taken, it also gives details of our surveillance activity. The names of persons listed have previously been put into the public domain through the court process.

Enforcement Policies

5. The Cabinet Member for Crime and Stronger Communities approved an enforcement policy for Environmental Health, Trading Standards, Licensing, Street Environment and Enforcement Services in February 2012. The Executive Member for Culture Leisure and Tourism approved an Enforcement policy for the National Trading Standards Regional Scambuster Team and National Trading Standards eCrime Team on 21 November 2016. The policies have become outdated due to emerging issues and other administrative matters – in the case of the latter policy, a change of name.
6. Annex B is the existing enforcement policy which covers Public Protection, Housing and Community Safety services as they are now known. The proposed updated version is contained in Annex C. The main changes in the new policy are as follows:

New policy paragraph no	Summary of change	Reason
Title	Public Protection, Housing Services and Community Safety Enforcement Policy	To reflect the new names of services.
Opening paragraph	Reference to Regulators Code	Regulators Code replaces 'Statutory Code of Practice for regulators'.
Opening Paragraph	<i>Please note, whilst this policy acknowledges that officers will adhere to principles of good practice in their enforcement activity,</i>	Makes it clear what is excluded.

	<i>it does not prescribe the way investigations will be conducted or the authorisation of surveillance activity. Furthermore, it does not include enforcement action by Planning, and Transport and Highways (including Parking services) which operate under their own guidance.</i>	
2.0	Reference to carrying out our activities in a way that supports those we regulate comply and grow.	Reflects the requirement under Regulators code
4.0	We will signpost towards additional business support services where appropriate.	Added to reflect our wider role of providing support to business (at the request of the York, North Yorkshire and East Riding Growth Hub).
4.0	Note that there may be a fee payable for our advice	Makes it clear that we may charge for the advice requested
5.0	Random inspections will be carried out where it is a condition of a licence	For clarity expands the circumstances in which inspections will be carried out.
7.0	Various changes to situations in which formal enforcement will be considered.	Changes for clarification: 'Unfair commercial practices' broadened to 'Unfair practices' generally to reflect that unfair practices extend beyond consumer protection matters (where the concept of unfair commercial practices is derived from) Word 'Illegal' added to sales of age restricted products to accurately reflect the situation in which enforcement action is considered.

		<p>'Operation of unlicensed taxis' etc. changed to 'operating without a licence when one is required' added to widen the circumstances in which action can be taken beyond taxis.*</p> <p>New additions: Health and Safety in the home added – important for housing services. Unauthorised encampments and tethered horses added – specific reference for clarity.</p> <p>Deleted: 'Commercial Fraud' deleted – unclear what it refers to. 'Composition of (sic) safety of animal feeding stuffs' deleted – no action has been taken since last revision. 'Overloaded goods vehicles' deleted – no action has been taken since last revision.</p> <p>Please note in relation to any deletion the provision that the Head of Service has discretion to institute proceedings on any other matter considered necessary remains.</p>
7.0	Changed 'Before' enforcement action is taken' to 'When enforcement action is taken'	For clarification that the opportunity to discuss the case etc will take place when enforcement action is taken.
7.0	We will take reasonable steps to discuss the circumstances of the case (unless it is an emergency situation)	Previously said there would be an opportunity to discuss the circumstances of the case (unless an emergency) but it is not always practicable to do so e.g if the person is abroad, in prison etc.
7.0	Discussion about the case may be under caution (previously said it may follow a	The caution exists for the protection of the person suspected of an offence and it is not appropriate to establish the

	caution) Added opportunity to discuss the proportionality or consistency of our intended course of action.	circumstances surrounding the offence without it. The addition of opportunity to discuss the decision (once the facts have been established through the investigation) is the opportunity intended to be provided.
7.0	Reworded examples of formal enforcement action	Added civil penalty notices for letting agents and landlords** as well as the suspension and revocation of a licence for clarity. Removed 'injunctive action' and added 'other court action' to simplify the wording.
10.0	Added an annual review of action taken under policy	Specified the timescales of the reviews.

** Work is underway to authorise Taxi Licensing Officers across York and West Yorkshire to enforce each others licence conditions.*

*** The Housing and Planning Act 2016 introduced the concept of civil penalties as an alternative to prosecution of landlords in certain cases. This provision will not become live until national guidelines have been issued and the provision formally adopted by the Executive Member for Housing and Safer Neighbourhoods.*

7. Annex D is the existing enforcement policy for the Scambusters and eCrime teams, the proposed changes are purely administrative and reflect a recent change in the name of the teams. The amended policy is contained in Annex E.

Consultation

8. A survey of Talkabout panellists was undertaken between 21/11/16 and 18/12/16 and they were asked to rank the importance of different aspects of the service carried out by Public Protection, Housing Services and Community Safety. Under the new enforcement policy, formal enforcement action will remain an option in all the areas they identified as important.
9. A survey of businesses was undertaken in October 2015. Respondents were asked about their priorities for Public Protection. There was a very small response – only 14 in total – but one of the key priorities was 'taking action against those flouting the law'. In this case, 8 out of 14

respondents gave 'Action against, including prosecution of, businesses breaking the law' an importance score of 4 or more out of 6. The enforcement policy enables such action to be taken.

10. The draft policy has also been shared with the Chamber of Commerce, the Federation of Small Business, the York, North Yorkshire and East Riding Growth hub, the Leeds City Region Growth Hub, Make it York and the Business Improvement District and the responses have all been supportive. See Appendix F for a full list of comments.
11. The service managers for Public Protection, Housing and Community Safety as well as legal services have been consulted on the amendments and all comments incorporated.

Options

12. Option 1 – note the action taken with comments as necessary and approve the amended policies.
13. Option 2 – note the action taken with comments as necessary and approve amended policies with any changes as thought fit.
14. Option 3 – note the action taken with comments and choose not to approve the amended policies.

Analysis

15. Option one will ensure that formal enforcement action (and surveillance activity) taken in 2016-17 has been reviewed. Furthermore, amending the policy will ensure that future enforcement action is proportionate and consistent, as well as being targeted appropriately.
16. Option two is likely to be of similar effect to option one, subject to the changes considered necessary.
17. Option three will leave us continuing to work with outdated enforcement policies.

Council Priorities

18. The legal actions support the Council's priorities in respect of the following:
 - A prosperous city for all – enabling legitimate businesses to thrive by tackling competition based on unfair and unsafe practices and ensuring residents having good quality housing.

- A focus on frontline services – many of the actions are taken in response to complaints from members of the public some of whom are the most disadvantaged in the City.
- This action is taken as part of our statutory duties.

Implications

19. **Financial:** There are no financial implications associated with this report.
20. **Human Resources:** There are no Human Resources implications associated with this report.
21. **Equalities:** There are no equalities implications associated with this report .
22. **Legal:** Under the City of York Council's delegation scheme, legal proceedings may only be approved if they are in accordance with an approved enforcement policy.
23. **Crime and Disorder:** Formal enforcement action contributes to reducing anti social behaviour and dishonest trading.
24. **Information Technology (IT):** There are no IT implications associated with this report.
25. **Other:** There are no other implications associated with this report.

Risk Management

26. Applying the Council's risk scoring criteria, operating with outdated enforcement policies poses a 'major risk' (potential action in a national court with the national media coverage) and a likelihood of 'possible' giving a score of **12** (yellow risk). Updating the policies, reduces the likelihood to 'unlikely' giving a score of **8** (green risk).

Contact Details

Author:

Matt Boxall
Head of Public Protection
Phone: 01904 551528

Chief Officer Responsible for the report:

Neil Ferris,
Director of Economy and Place

Report
Approved



Date 14.09.2017

Specialist Officer Implications: None

Wards Affected:

All

Background Papers:

None

Annexes

- Annex A - Summaries of Formal Enforcement Action 1st March 2016 to 31st March 2017
- Annex B - Existing Enforcement Policy - Environmental Health, Trading Standards, Licensing, Street Environment and Enforcement Services Enforcement Policy (February 2012)
- Annex C – Proposed Enforcement Policy
- Annex D – Existing Enforcement Policy - Trading Standards Scambuster Team and National Trading Standards eCrime Centre Enforcement Policy Statement (June 2013)
- Annex E – Proposed Enforcement Policy - National Trading Standards Regional Investigation and National Trading Standards eCrime teams
- Annex F – Responses from Consultation
- Annex G – Better Decision Making tool

Abbreviations: None