

Shadow Dorset Council

Date of Meeting	25 March 2019
Lead Member	Cllr Spencer Flower – Chairman, Governance Working Group
Officer	David Fairbairn – Solicitor to the Council, Purbeck District Council
Subject of Report	Adoption of Overarching Enforcement Policy
Executive Summary	<p>The report proposes a draft overarching enforcement policy so that decisions to take enforcement action are taken in a fair, transparent and consistent manner. Where the enforcement action is one of those regulated by the Legislative and Regulatory Reform Act 2006, the policy will assist the Council to comply with the requirements of the Act and the statutory Regulators’ Code 2014.</p> <p>Individual service areas will adopt service specific policies which are consistent with the framework provided by the overarching policy.</p>
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>Yes. There are no equalities implications arising from this report.</p>
	<p>Use of Evidence:</p> <p>This report has been written in consultation with other legal officers and the relevant project manager.</p>
	<p>Budget:</p> <p>There are no budget implications</p>
	<p>Risk Assessment:</p> <p>Having considered the risks associated with this decision using the LGR approved risk management methodology, the level of risk has been identified as: Current Risk: POSSIBLE Residual Risk UNLIKELY</p>
	<p>Other Implications:</p>

	Failure to have an enforcement policy could potentially result in allegations of abuse of process being made, which if successful would result in legal proceedings being dismissed. The absence of an enforcement policy may also result in an inconsistent approach being taken with regard to enforcement action. Either or both of these could result in significant reputational damage to the Council and result in non-compliance with the Legislative and Regulatory Reform Act 2006 and/or the Regulators' Code where applicable.
Recommendation	That the Shadow Executive Committee: 1. Adopts the draft overarching enforcement policy attached as Appendix 1;
Reason for Recommendation	The adoption and compliance with the draft policy will meet the requirements of the Legislative and Regulatory Reform Act 2006 and the Regulators Code 2014 to which Regulators whose functions are specified by order under section 24(2) of the Act must have regard when developing policies and operational procedures that guide their regulatory activities.
Appendices	Appendix 1 – Draft overarching enforcement policy
Background Papers	None
Officer Contact	Name: David Fairbairn, Solicitor to the Council, Purbeck District Council Tel: 01929 557223 Email: davidfairbairn@purbeck-dc.gov.uk
Date agreed by Lead Member	March 2019
Date agreed by Statutory Officers	

1. Introduction

- 1.1 Dorset Council has a number of statutory responsibilities for: monitoring compliance with legal requirements affecting people, the places where they live and work, and the natural environment; and taking enforcement action where individuals or businesses fail to meet their legal obligations.
- 1.2 Failure by an individual or a business to meet their legal obligations can be the result of ignorance or of a deliberate act or omission. Some failures have a very limited impact, while others may impact upon many people. The consequences of a breach may be serious or not so serious. In between these extremes, the permutations are incalculable. Potentially, no two decisions on enforcement action are the same.
- 1.3 The rationale for adopting an overarching policy is to introduce a framework for making decisions so that such decisions are consistent, transparent, and fair so capable of being objectively justified. Failure to make decisions that are consistent

and fair may result in legal proceedings being dismissed as an abuse of process or being judicially reviewed.

2. The draft policy

- 2.1 The draft policy (Appendix 1) sets out the approach and the broad principles that the Council will apply in exercising its general enforcement powers. It does not set out the legal requirements for taking specific types of enforcement action nor the procedures to be followed, but leaves those to more specific individual service area policies.
- 2.2 Insofar as the Council's enforcement powers are regulated by the Legislative and Regulatory Reform Act 2006, the draft policy reflects the principles set out in section 21 of the Act namely that:
 - a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
 - b) regulatory activities should be targeted only at cases in which action is needed.
- 2.3 Again insofar as the Council's enforcement powers are regulated by the Act, the draft policy meets the requirements of the Regulators' Code 2014 to which regard must be had in exercising such enforcement powers.