

Brighton & Hove City Council

Environment, Transport & Sustainability Committee

Agenda Item 43

Subject: Safer Communities Enforcement Policies

Date of meeting: 15 November 2022

Report of: Executive Director of Housing, Neighbourhoods and Communities

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Ward(s) affected: All

For general release

1. Purpose of the report and policy context

1.1 The purpose of this report is to seek approval for the implementation and publication of the Safer Communities Enforcement Policy and the Enforcement Policy in Relation to the Relevant Letting Agent Legislation

2. Recommendations

2.1 That the Environment, Transport and Sustainability Committee endorses the Safer Communities Enforcement Policy attached as Appendix 1

2.2 That the Environment, Transport and Sustainability Committee endorses the Enforcement Policy in Relation to the Relevant Letting Agent Legislation attached as Appendix 2

3. Context and background information

3.1 The primary function of regulatory services is to protect the public, the environment and the local economy. The Enforcement Policy sets out and provides guidance on the range of enforcement options available to the Council to achieve compliance with the legislation enforced.

The Regulators' Code outlines the Government's expectation that local authorities will ensure their approach to their regulatory activities is transparent.

This enforcement policy explains how the Council will implement the Regulators' Code and what individuals, households; businesses and other agencies can expect from our enforcement activities.

3.2 The teams covered by the Regulatory Services Enforcement Policy are as follows:

Trading Standards
Licensing
Food Safety
Health and Safety
Environmental Protection
Animal Wardens
Taxi Licensing
Field Officers
Community Safety

- 3.3 The Department of Levelling Up, Housing and Communities (previously the Ministry of Housing, Communities & Local Government (“MHCLG”)) has published guidance for enforcement authorities in respect of the Tenant Fees Act 2019 and Client Money Protection Requirements. This is statutory guidance to which enforcement authorities must have regard to when considering to impose a financial penalty. This statutory guidance recommends certain factors that an enforcement authority should take into account when deciding on the level of financial penalty to impose and further recommends that enforcement authorities develop and document their own Policy on determining the appropriate level of financial penalty in a particular case. Work was started to implement this policy, however due to the pandemic was put on hold.
- 3.4 The range of offences included within the legislation are the failure to display tenant and landlord fees; requiring a person to pay a prohibited fee, failure to hold Client Money Protection and failure to belong a property redress scheme. Financial penalties can then be used to carry out enforcement activity in relation to the private rented sector.
- 3.5 The Enforcement Policy in Relation to the Relevant Letting Agent Legislation will allow us to meet this requirement. This penalty policy has been drafted by the National Trading Standards Estate and Letting Agents Team as the lead authority and the adoption of it is recommended in order to provide consistency in enforcement of relevant letting agent legislation across England and Wales.

4. Analysis and consideration of alternative options

- 4.1 Without relevant enforcement policies in place, it will open Regulatory Services up to challenge as to the basis of any prosecutions. This would introduce additional costs in arguing the challenge and may risk prosecutions failing prior to evidence being heard
- 4.2 This policy will also assist in being transparent with the public as to what is expected of them and promote consistency in dealing with investigations.

5. Community engagement and consultation

- 5.1 The previous enforcement policies for Regulatory Services individual teams have been published on the Council website but to date no comments have been received.
- 5.2 The Regulators Compliance Code indicates that Enforcement Policies should be published. If subsequent information demonstrates that changes may be required then that information will be acted on as part of the monitoring and review process.
- 5.3 All teams within the Regulatory Services have been consulted about the policy, any comments or suggestions have been incorporated into the policy, where appropriate.

6. Conclusion

- 6.1 The proper implementation of the Policy will help ensure that all Regulatory Services officers carry out their duties in a fair, equitable and consistent manner

7. Financial implications

- 7.1 There are no financial implications with the adoption of this policy as all costs of meeting its application are met within current budgets.

Name of finance officer consulted: Mike Bentley

Date consulted: 14/10/22

8. Legal implications

- 8.1 It is good practice to have clear policies behind any investigation and enforcement action taken. No policy can absolutely tie the hands of Safer Communities as facts and circumstances change and some departure is permissible when the circumstances warrant it.

Name of lawyer consulted: Simon Court Date consulted (18/10/2022):

9. Equalities implications

- 9.1 None identified

10. Sustainability implications

- 10.1 There are no identified negative impacts on sustainability from the introduction of these policies. Fair and proportionate enforcement leads to an equal playing field for all local businesses supporting the local economy and local employment. The enforcement policy will be considered in relation to statutory noise nuisance, anti-social behaviour, illicit tobacco/alcohol, micro plastics, safety of consumer products, regulations in the private rented sector as well as the safety and standards of food. Each of these will promote healthy, safe and secure environments in which to live and work.

11. Other Implications

Crime & disorder implications:

- 11.1 The Policy directs regulators to consider targeted and proportionate action against those that persistently breach the legislation so should assist in the prevention of crime and disorder. The sharing of information with other regulators will also assist in tackling crime and disorder in the city.

Public health implications:

- 11.2 The enforcement policy is relevant to the protection of all residents and visitors to the city, however in particular age restricted products, counterfeit goods and unsafe consumer products. The enforcement of food safety and standards are particularly crucial for those more vulnerable to ill health in particular children, older people and those with medical conditions (e.g. allergies).

Supporting Documentation

1. Appendices

Appendix 1 - Safer Communities Enforcement Policy

Appendix 2 - Enforcement Policy in Relation to the Relevant Letting Agent Legislation

Appendix 3 - Equalities Impact Assessment