

Individual Executive Decision Notice Cabinet Member Briefing - City Environment

Report title	Complaints Policy - Covid	
Decision designation	GREEN	
Cabinet member with lead responsibility	Councillor Steve Evans Cabinet Member for City Environment	
Wards affected	(All Wards);	
Accountable Director	Ross Cook, Director of City Environment	
Originating service	Commercial Regulation	
Accountable employee	Author name	Emma Caddick
	Tel	01902 554320
	Email	Emma.caddick@wolverhampton.gov.uk
Report to be/has been considered by	City Environment Leadership Team	02 March 2021

Summary

The report seeks endorsement for the proposed complaints policy in relation to action taken under The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (as amended).

Recommendation(s) for action or decision:

That the Cabinet Member for portfolio, in consultation with the service director for City Environment:

1. Endorse the proposed complaints policy in relation to action taken under The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2021 (as amended). The policy will apply to any subsequent revisions to this legislation or superseding legislation in relation to business restrictions.

Signature

Signature

Date:

Date:

1.0 Background

- 1.1 The Health Protection (Coronavirus, Restrictions) (All Tiers) Regulations 2020 came into force on 2 December 2020 and were subsequently amended on the 6 January 2021. The amended regulations impose closures and restrictions upon a number of businesses. Enforcement of these regulations lies with the local authority.
- 1.2 The regulations give local authorities the power to serve a prohibition notice in relation to a breach of a Tier 4 restriction. This would apply to a restricted business, which should be closed but remains open to members of the public. Failure to comply with a prohibition notice is an offence and a fixed penalty notice can be issued to the offender. The fines increase dependant on the number issued to the person. Offenders will be fined:
- £1,000, if the fixed penalty notice is the first one issued to the person in respect of a business restriction offence
 - £2,000, if the fixed penalty notice is the second one issued to the person in respect of a business restriction offence;
 - £4,000, if the fixed penalty notice is the third one issued to the person in respect of a business restriction offence;
 - £10,000, if the fixed penalty notice is the fourth one, or any subsequent one, issued to the person in respect of a business restriction offence.
- 1.3 There is no right of appeal under these regulations; instead individuals who are served with a fixed penalty notice or a prohibition notice, can complain to the local authority.
- 1.4 Currently, any complaints dealt with by the authority go through the customer engagement team. Following a discussion with the Customer Engagement Manager, it was felt that due to the regulatory nature of the process it was not appropriate to deal with it via the customer feedback route.

2.0 Proposed Policy

To ensure transparency, an internal policy has been developed to deal with complaints of this nature. A copy is attached in Appendix 1. The policy will apply to any subsequent revisions to this legislation or superseding legislation in relation to business restrictions.

3.0 Evaluation of alternative options

- 3.1 Consideration was given to dealing with complaints of this nature through the customer engagement team. Due to the regulatory nature of the process this route was not deemed appropriate.

4.0 Reasons for decision

- 4.1 As there is no right of appeal businesses who have been served with a prohibition notice or fixed penalty notice under the regulations, should be afforded the right to have the

decision made against them reviewed. The process also provides them with the opportunity to put forward any defence in relation to the offence.

5.0 Financial implications

- 6.1 Any income collected under The Health Protection (Coronavirus, Restrictions) (All Tiers) Regulations 2020, will be used to offset the costs of enforcement of these regulations, which will be provided by the Council's Commercial Regulation service. The financial implications of this will be monitored and reported through the Council's quarterly financial monitoring processes.

[EM/26022021/L]

6.0 Legal implications

- 6.1 Regulation 8 and Part 3 of Schedule 3A, paragraph 16(1) of The Health Protection (Coronavirus, Restrictions) (All Tiers) Regulations 2020 gives local authorities the power to serve a prohibition notice in relation to a breach of a Tier 4 restriction.
- 6.2 Failure to comply with a prohibition notice is an offence and a fixed penalty notice will be issued to the offender under section 11(1) of the Health Protection (Coronavirus, Restrictions) (All Tiers) Regulations.

[RP/26022021/A]

7.0 Equalities implications

- 7.1 There are no equality implications in relation to this policy.

8.0 Schedule of background papers

- 8.1 There are no background papers in relation to this report.

9.0 Appendices

- 9.1 Appendix 1: Complaints Policy in Relation to action taken under The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020.

Appendix 1

Complaints Policy in Relation to action taken under The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (as amended).

The Health Protection (Coronavirus, Restrictions) (All Tiers) Regulations 2020 (as amended.) gives local authorities the power to serve a prohibition notice in relation to a breach of a Tier 4 restriction. This is imposed by regulation 8 and Part 3 of Schedule 3A, paragraph 16(1) of the Regulations.

Failure to comply with a prohibition notice is an offence and a fixed penalty notice will be issued to the offender under section 11(1) of the Health Protection (Coronavirus, Restrictions) (All Tiers) Regulations.

There is no right of appeal under these regulations; instead individuals who are served with a fixed penalty notice or a prohibition notice and who are disputing its service must make a complaint in writing within 7 days to The Commercial Regulation Service.

The Service Lead responsible for Environmental Health or Trading Standards will review the decision to serve the notice considering the complainant's comments and will respond within 14 days.

Please note that if a prohibition notice has been served and a complaint has been made to the authority, the business must continue to operate in line with what is stipulated in the prohibition notice, it cannot re-open whilst the case is being reviewed.

If the complainant is still not satisfied, then they may make a further complaint in writing within 7 days (after receipt of the initial response) to the Head of The Commercial Regulation Service. They will review the case and make the final decision as to whether the notice was served correctly and will respond within 14 days.

The Head of the Commercial Regulation Service's decision is final. Should he determine that the notice was served correctly then the prohibition notice will still stand and in the case of a fixed penalty notice the fine will need to be paid within 28 days.

Legal action will be taken against the individual to whom the notice was served should the fixed penalty be unpaid after 28 days.

The policy will apply to any subsequent revisions to this legislation or superseding legislation in relation to business restrictions.