



CEREDIGION CORPORATE ENFORCEMENT POLICY

INTRODUCTION

The Council carries out a wide range of regulatory roles in meeting its many statutory duties of protecting the public, individuals and the environment in accordance with the priorities outlined in the Authority's Corporate Strategy 2017-2022 which are Boosting the Economy, Investing in People's Future, Enabling Individual and Family Resilience and Promoting Environmental and Community Resilience. The priorities are met in the Authority's regulatory role which also includes enforcement. Enforcement can help the delivery of these priorities in various ways including:

- Wellbeing: for example, ensuring that food and drink are safe to consume
- Environment: where we have responsibilities for wildlife protection
- Economy: where trading standards enforcement can prevent businesses that trade fairly from being undercut by those that resort to "sharp" practices
- Community: where we can act to safeguard historic buildings
- Housing: where we ensure minimum standards, particularly within the private rented sector
- Learning: where we can act to ensure young people attend school
- Access: where our action keeps rights of way open
- Safety: where we work extensively with other agencies, including the Police.

This Policy outlines the approach we take when considering enforcement action. This policy is an overarching policy that applies to all the Council's Services with enforcement duties, although it should be noted that some services have specific Legislative Guidance and Regulations which set out the enforcement requirements in these services.

The appropriate use of the full range of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare or breach of regulations enforced by the Council.

In deciding on the most appropriate course of action officers should have regard to the principles set out in this policy and the need to maintain a balance between enforcement and other activities, including inspection and education. What range of enforcement powers to be utilised by the Authority will only be decided after any investigation has been completed and the evidence reviewed. However, there will be some cases where it is clear prior to the collection and consideration of all the evidence where a decision will be made that it is not in the public interest to prosecute or that the offender should receive suitable advice or some other informal action.

This policy has been prepared having due regard to the seven key principles of the Future Generations and Wellbeing Act 2015, namely:

- A globally responsible Wales
- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh language

Principles of good regulation

The Authority will exercise its regulatory activities always taking into account where appropriate the principles of public life which includes integrity, objectivity, accountability, openness and honesty. In addition The Legislative and Regulatory Reform Act 2006, Part 2, requires the Authority to have regard to the Principles of Good Regulation when exercising specified regulatory functions.

We will exercise our regulatory activities in a way which is:

Proportionate - our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence;

Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;

Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by other regulators. The Council shall seek to ensure consistency of enforcement; however the Council appreciates that consistency is not a simple matter of uniformity. Officers will need to exercise their professional judgement and discretion according to the circumstances of each individual case and the relevant responsibilities and intervention systems maintained by the Council;

Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and

Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities and where the Council believes its efforts are able to have an impact.

AIM OF THE ENFORCEMENT POLICY

The aim of the Policy is to set out our approach to enforcement action throughout the service areas where the Authority has responsibility for

regulation. We intend to apply our legal powers consistently and fairly, whatever the circumstances. This Policy sets out our approach for those affected by our enforcement activities as well as for Officers of the Council.

Each case considered by the Authority will have its own unique facts and therefore each case considered by it will be decided on its own merits. The Authority will apply its legal powers fairly and whenever possible consistently.

Objectives

- To ensure we enforce the law in a fair and consistent manner
- To assist and advise business and others in meeting their legal obligations
- To focus on prevention rather than cure
- To take firm action against those who flout the law, act irresponsibly, or where there is an immediate risk to health and safety
- To support economic progress.

We will also make sure all enforcement activities are:

- Taken in accordance with the principles of good enforcement (best practice guides and / or statutory provisions).
- Compatible with the European Convention on Human Rights and the Human Rights Act 1998, to protect the rights of the individual. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.
- Consistent with the Equality Act 2010
- Managed efficiently
- Undertaken in a fair and transparent manner
- Targeted according to risk and having regard to the National Enforcement Priorities for Wales where relevant.

RESPONSIBILITIES

All officers should endeavour to comply with the spirit of this Enforcement Policy and any exceptional departure must be endorsed by the relevant Corporate Manager and must be justified by the officer in writing.

Any departure from the policy must be exceptional, justifiable and fully considered by the appropriate Corporate Manager or the Corporate Lead Officer having regard to risks to public health and safety.

The decision to prosecute or caution in each case normally lies with the appropriate Corporate Manager but on occasion it may be necessary to make such decisions in consultation with the relevant Corporate Lead Officer and with Legal Services.

EQUALITY AND DIVERSITY

The Authority and its officers will take all reasonable and practical steps to prevent and eliminate unlawful discrimination and encourage good relations between all parties, treating all those involved with equal respect, both when corresponding with those individuals and organisations and during any enforcement proceedings.

This will be done having regard to the seven protected characteristics under the Equality Act 2010 irrespective of the individual's ethnic origin, sex, age, marital status, sexual orientation, disability, gender reassignment, religious beliefs or non-belief, use of other languages including sign language, nationality, responsibility for any dependents or any other reason which cannot be shown to be justified.

This Policy is available in both the English and Welsh languages and can be provided in another format on request. Officers are aware of and respect cultural requirements and when necessary and with prior notice, will arrange suitable meeting times and venues, and appropriate translation or interpretation services. The policy reflects the Council's Welsh language policy statement in that the Welsh language should not be treated no less favourably than the English language.

COMPLAINTS

Any complaints about the application of this Policy should be addressed to complaints@ceredigion.gov.uk. If the matter is not satisfactorily concluded it will be dealt with in accordance with Ceredigion County Council Concerns and Complaints Policy:

<http://www.ceredigion.gov.uk/English/Your-Council/Complaints/Pages/Complaints-Policy.aspx>

THE PRINCIPLES OF GOOD REGULATION – REGULATORS' CODE

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Authority to have regard to the Principles of Good Regulation when exercising a specified regulatory function. The Regulators' Code applies to the regulation of business and supplements the principles of the Enforcement Concordat. The code only applies to specified functions carried out by our Environmental Health, Trading Standards and Licensing Services.

Regulators must have regard to the code when developing policies and operational procedures that guide their regulatory activities.

The decision to prosecute or to recommend any other sanction is a serious step that affects alleged perpetrators, witnesses and the public at large and, therefore, each decision will be approached with the utmost care.

Each decision will be taken fairly, impartially and with integrity with the ultimate

aim to secure justice for all.

SUPPORTING REGULATED BUSINESSES TO COMPLY AND GROW

We will try to avoid imposing unnecessary regulatory burdens on business through our regulatory activities and we will assess whether the desired outcomes could be achieved by less burdensome means. Our policies and practices will encourage and promote compliance but, in doing so, will try to minimise the negative economic effect of our activities and the cost of compliance. We will take into consideration the size of the regulated entity, capacity and the nature of their activities.

CONDUCT OF INVESTIGATIONS

Investigations will be undertaken impartially and fairly and will ensure that the law is properly applied taking into account all relevant legislation, policies and the Criminal Procedure Rules in being at the relevant time. During the investigation it may be necessary for officers to formally interview the alleged perpetrators either at one of the offices of the Authority or alternatively at a local Police Station. Such formal interviews will be conducted in accordance with the Police and Criminal Evidence Act 1984 and the Codes of Practice.

Investigating officers will make a recommendation on suitable outcomes to their Corporate Managers having had the file reviewed by their Line Manager. In certain circumstances, the Corporate Lead Officer will make the final decision in consultation with Legal Services.

SHARED ENFORCEMENT ROLE

In certain situations the local authority will work in conjunction with other enforcement agencies. Where the Authority enforces, this policy will apply. However, this policy does not apply to other enforcement agencies that we may collaborate with on some enquiries.

If an offender commits an offence in a number of local authority areas, it may be more appropriate for one Council to take a prosecution for all the offences, including ones that took place outside of its area. In such circumstances we may enter into legal agreements with other councils for one authority to take the lead role, making use of the provisions under Sections 19 of the Local Government Act 2000 and 222 of the Local Government Act 1972 or any other enabling powers.

ENFORCEMENT WITHIN LOCAL AUTHORITY-RUN ESTABLISHMENTS

Where the Council is the Enforcing Authority for its own premises, steps are taken to ensure that enforcement decisions are free from any conflict of interest and any remedial action is given in writing.

Serious breaches of legislation are brought to the attention of the relevant Corporate Lead Officer, Corporate Director and Chief Executive without delay.

ENFORCEMENT OPTIONS

A number of enforcement options are available and officers are authorised to enforce legislation in accordance with the Council's Scheme of Delegation. The appropriate option will be determined following careful consideration of the circumstances of each individual case. Our officers will interpret and apply legal requirements and enforcement policies consistently and fairly.

INFORMAL ACTION

In circumstances where minor breaches of legislation have been identified, formal action may not be considered appropriate. There may be no significant risk and the offence appears to have been committed by a genuine mistake or accident and, from the individuals/businesses past history, it can be reasonably expected that informal action will achieve compliance. Therefore formal action may not be in the public interest. Informal action may consist of verbal or written warnings.

We will clearly identify any contraventions of the law and give advice on how to put them right. We will distinguish between legal requirements and best practice. The time allowed will be reasonable and will take into account the seriousness of the contravention. Continued non-compliance of legal requirements could result in an escalation to more formal enforcement action.

The Authority may in some circumstances accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Any failure to honour such undertakings is likely to result in enforcement action.

FORMAL ACTION

The Authority has a wide range of regulatory and enforcement options available to it which include the following: giving advice and guidance, statutory notices, Fixed Penalty Notices, Penalty Charge Notices, Penalty Notices for Disorder, Community Protection Notices, Fixed Monetary Penalties, Variable Monetary Penalties, Non-Monetary Discretion requirements, Injunctive Actions, Seizure and in respect of licenses, Revocation, Review and Suspension. The above list of such penalties and Notices is not, however, exhaustive due to the range of penalties and Orders available.

The Authority also has more formal actions available to it which includes the imposition of cautions and the instigation of court prosecutions.

An out of court disposal must be appropriate to the seriousness and consequence of the offending and must be an appropriate response to the offender. The evidential standard of the out of court disposal must be met which indicates, where appropriate, a clear admission of guilt. The public interest factors must also be considered in any out of court disposal.

The Authority will also take into consideration the Rehabilitation of Offenders

Act 1974 and the Rehabilitation Act (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013.

GATHERING OF EVIDENCE

Regulatory bodies are empowered to gather evidence by various means, this can include overt methods i.e. where the subject is aware or where appropriate, covert methods, where the subject is unaware. The Council may covertly obtain communications data such as telephone subscriber details and service use. In such cases of directed surveillance or obtaining communication data, appropriate authorisation is sought in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA) and the Protection of Freedoms Act 2012. Authorisation may be sought for directed surveillance if the offence in question could result in a sentence of six months or more imprisonment, there are however exemptions to this criteria including the sale of alcohol and tobacco to children. Further information is available in the Council's RIPA Policy.

CONFISCATION OF ASSETS

Under the Proceeds of Crime Act 2002, officers may seek Confiscation Orders against persons who have been convicted of offences where they have profited from their crimes. The purpose is to recover the financial benefit that the offender has obtained from their crimes and act as an additional deterrent to others. Whilst proceedings will normally only take place after a criminal conviction has been obtained, and are conducted according to the civil standard of proof, the advice of an Accredited Financial Investigator should be sought at an early stage of a criminal investigation so that the Financial Investigation can be progressed without delay. Notice of the application to proceed to confiscation must be made after a conviction has been secured but prior to sentencing.

SEIZURE AND FORFEITURE

Certain legislation enables officers to seize goods, equipment or documents, where they may be required as evidence for possible future court proceedings or to prevent further offences from being committed. When items are seized an appropriate receipt will be given to the person from whom the items are taken. In certain circumstances an application will be made to the Magistrates Courts for forfeiture of the goods. Forfeiture may be used in conjunction with seizure and / or prosecution, where there is a need to dispose of the goods or equipment to prevent them being used to cause a further problem or to prevent them re-entering the market place.

TAKING ANIMALS INTO POSSESSION

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, we may consider taking them into possession and applying for Orders for re-imburement of expenses incurred and subsequent disposal. The Environment Protection Act 1990 also contains provisions relating to the seizure

of stray dogs.

SIMPLE CAUTIONS

The use of a Simple Caution offers an alternative to prosecution and may be considered during any decision to prosecute. A simple caution is an admission of guilt but is not a form of sentence, nor is it a criminal conviction. Before issuing a Simple Caution the following conditions must be satisfied:

- there must be evidence of guilt sufficient to give a realistic prospect of conviction
- the offender must understand the significance of a caution and give informed consent to being cautioned
- the offender must admit to the offence
- the offender must be over 18 years of age

In deciding whether to caution or prosecute the following factors must be taken into consideration:

- the nature and seriousness of the offence;
- the likely penalty if the offender was convicted by a court;
- the offender's age and state of health;
- the offender's previous criminal history;
- the offender's attitude towards the offence;
- the views of the victim or any aggrieved party;
- whether compensation has been paid.

A simple caution is a serious matter, which will be recorded and will influence any future decision as to enforcement action should the business or person offend again. A simple caution can be cited in court, so it may influence the severity of any sentence imposed by the court. The refusal of an offender to be cautioned may be a material consideration when deciding whether the offender should then be prosecuted for that offence. Accepting a simple caution may have consequences if an individual seeks certain types of employment.

PROSECUTION

Where the circumstances warrant it and the alternative actions listed above are considered inappropriate or have already been utilised, then prosecution may result.

The decision to prosecute or to administer a Simple Caution is normally taken by the relevant Corporate Manager on the advice of the Investigating Officer.

Each case will be decided on its own merits and taken fairly and impartially with the ultimate goal of securing justice for victims, defendants and the public at large. The Authority is well aware that the decision to prosecute or recommend out of court disposal is a serious one and will at all times be taken only after very careful consideration. Prosecution decisions will only be taken when the Authority is satisfied that the broad extent of the criminality has been

determined and that they are able to make a fully informed assessment of the public interest.

The decision will be taken in two stages, the first being the evidential stage followed secondly by the public interest stage. This is in fact mirrored in the current Code for Crown Prosecutors Code for Prosecutors: http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

The Code for Crown Prosecutors has two main tests that must be satisfied:

The Evidential Stage

A prosecution will only be undertaken when the Authority is satisfied that there is sufficient evidence to provide a realistic prospect of a conviction on each charge. This will include any information that the perpetrator has put forward or on which the perpetrator might rely. In making this assessment the Authority will assess the reliability, credibility and the admissibility of that evidence. In doing so, the Authority will seek the advice of Legal Services on the question of admissibility of evidence. A case which does not pass the evidential stage will not proceed further regardless of its seriousness or its sensitivity.

Public Interest

In cases where the evidential stage has been met, the Authority will consider whether a prosecution is required in the public interest, weighing up factors in favour of prosecution and balancing against them public interest factors that are against a prosecution. Those factors together with any other public interest factors also including local government guidance or policies will enable the Authority to form an overall assessment of the public interest. The list of public interest factors is too extensive to particularise in this policy. The Authority will also consider whether a prosecution is proportionate to the likely outcome bearing in mind the cost to the public purse, and the wider criminal justice system, when weighed against any likely penalty.

Each case which meets the evidential and public interest criteria will be kept under constant review and any change in circumstances which includes any further information supplied to us as the case develops will be taken into consideration when applying the evidential and public interest tests.

The Authority is well aware that the criminal justice system treats children and young people differently from adults and in considering a case involving such a group the best interests and welfare of the child will be a public interest factor taken into consideration.

The final decision on whether to prosecute shall be made after:

- The suspected offender has been given the opportunity to offer an explanation under caution;
- Wherever possible a full and complete prosecution report file has been prepared and presented to the

- relevant Corporate Manager or the Corporate Lead Officer detailing the facts in the prescribed format;
- The investigating officer has fully discussed the case with his/her Line Manager and the relevant Corporate Manager or Corporate Lead Officer.

On completion of prosecution cases, officers must inform other interested bodies of the outcome of the case as necessary. In particular, any complainants or victims will be informed. The outcome of the case will be reviewed with the relevant Corporate Manager to discuss any necessary future action.

CONSULTATION AND REVIEW

This policy was subject to consultation during its production and will be reviewed every three years.

MISCELLANEOUS MATTERS

Civil Parking Enforcement (CPE)

This policy does not cover monitoring and enforcement activities carried out under the auspices of the Council's CPE Scheme. These activities are covered by the Welsh Penalty Processing Partnership CPE Procedures which were approved by Cabinet in 2012. The CPE Procedures document is available to view online at www.wppp.org.uk

Food Law Enforcement

The Food Law Code of Practice (Wales) 2014 ("the Code") provides direction and guidance on the execution and enforcement of food law. The Code is issued under section 40 of the Food Safety Act 1990, and associated regulations and sets-out authoritative instructions and criteria to which Food Authorities must have regard.

The Code requires that each Food Authority should have an up-to-date, documented Food Law Enforcement Policy which is readily available to food business operators and consumers. Such a policy may be part of a generic policy, or combined with other enforcement policies, providing the applicability of the policy to the enforcement of food law is clear.

A copy of the Compliance and Enforcement Policy: Food Law Enforcement is provided at Appendix A and can be accessed on-line.

Any similar charters/protocols produced in the future will be added to this policy for reference.

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