

Archived Decisions for the Portfolio Holder for Waste, Climate Change and Welsh Language 2012



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ARCHIVED PORTFOLIO HOLDER DELEGATED DECISION

1.	2012-02-03 ENFORCEMENT POLICY FOR WASTE SERVICES
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2.	2012-03-12 SUSTAINABILITY INTEGRATION TOOL
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Decisions taken by Individual Portfolio Holders

Councillor K.A. Harris

Portfolio Holder for Waste, Climate Change and Welsh Language

Decisions Taken 3 February 2012

Enforcement Policy for Waste Services

DECISION	Reason for Decision:
The Enforcement Policy for Waste Services is formally adopted by the authority.	So that the Council is in a robust position to enforce the relevant environmental legislation
	So residents and businesses area aware of the approach of the Council to enforcing environmental legislation.

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CYNGOR SIR POWYS COUNTY COUNCIL.
Portfolio Holder Decision
26 January 2012

REPORT AUTHOR: Senior Manager Waste Services

SUBJECT: Waste Services Enforcement Policy

REPORT FOR: Decision

Summary

This report outlines a high level enforcement policy for waste services for adoption by the authority. This will ensure that any enforcement activity in relation to waste activities is undertaken within a framework that means the authority is acting in a considered and fair manner.

Proposal

The policy has been adapted from one that is already in existence for Public Protection activities. It has been changed slightly to reflect the different work areas and legislation that is applicable to waste related activities. Other than that the document is the same and therefore follows enforcement principles already adopted by the authority.

The Council needs to have an enforcement policy like this in place for waste services. Without one the authority is not in a position to take enforcement action that could lead to possible sanctions as it would not have a sound legal footing on which to do so. Although the Council adopts a regime of education before sanctions it has to retain the ability to pursue sanctions in accordance with legislation in the event that this deemed appropriate.

It is proposed that the Council formally adopt this Enforcement policy in relation to waste services.

Powys Change Plan

The ability to take enforcement action could support the Council in the Climate Change Programme and help to ensure the county is considered 'clean and green'. There are also links to the Community Safety work of the authority and its partners.

Options Considered/Available

Without this policy the Council is unlikely to be well placed legally to pursue sanctions in relation to waste management legislation. It also will not be able

to demonstrate to residents and business the approach it is taking in relation to the compliance with environmental legislation.

Preferred Choice and Reasons

The proposed policy at attached to this report and as outlined above is based on documents within the Public Protection Service.

Support Services (Legal, Finance, HR, ICT, BPU)

The document has been drafted in conjunction with officers from the legal department. There are no immediate HR or ICT issues with regard to this report.

Statutory Officers

The view of the Strategic Director, Finance & Infrastructure (Section 151 Officer) is this proposal is within existing budget.

The Strategic Director, Law & Governance (Monitoring Officer) supports the adoption of an Enforcement Policy.

Recommendation:	Reason for Recommendation:
The Enforcement Policy for Waste Services is formally adopted by the authority	So that the Council is in a robust position to enforce the relevant environmental legislation
	So residents and businesses area aware of the approach of the Council to enforcing environmental legislation.

Relevant Policy (ies):	Waste Services Enforcement Policy		
Within Policy:	Y	Within Budget:	Y

Relevant Local Member(s):	
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Person(s) To Implement Decision:	Senior Manager – Waste Services
Date By When Decision To Be Implemented:	

Contact Officer Name:	Tel:	Fax:	Email:
Lee Marshall	01597 82 6064		Lee.marshall@powys.gov.uk

**WASTE SERVICES
ENFORCEMENT POLICY**



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AMENDMENT RECORD

ISSUE	DATE	APPROVED	SUMMARY OF CHANGE
1	Nov 2011	HoLES & Portfolio Holder	First document

INTRODUCTION

This is the Enforcement and Prosecution policy of Powys County Council's Waste Management Service, which includes all waste related activities. It provides information on:

- The purpose of the enforcement policy
- Our principles of inspection and enforcement
- Our compliance with the 'home authority' and 'primary authority' principle
- Our enforcement actions
- What you can expect from the council
- Our accessibility and advice details
- Our commitment to you
- Complaints, compliments and comments about the Service

We are committed to the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006, the Enforcement Concordat and the Regulators' Compliance Code, along with the Regulatory, Enforcement and Sanctions Act 2008.

Within the context of this Policy, the term '**enforcement**' includes any action taken by officers aimed at ensuring that businesses or individuals comply with the law. These actions may range from offering advice, information and issuing public warnings, to cautioning and instituting legal proceedings/prosecutions.

Compliance with the Policy will ensure that we will strive to be fair, impartial, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be influenced by improper or undue pressure from any source.

1. The Purpose of our Enforcement Policy

Our functions within Waste Management are to carry out our duties in various ways, including: inspection, testing, investigation and prosecution, but also by informing, advising and educating businesses, charities, organisations and the public.

The purpose of this enforcement policy is to provide a framework to make sure that we work in an equitable, practical and consistent manner.

We recognise that prevention is better than cure and that most businesses, charities, organisations and members of the public want to comply with the law. We will endeavour to help these groups and individuals to meet their legal obligations without unnecessary expense or burden. When a group or individual does break the law, we will consider all the surrounding circumstances before deciding whether formal action is appropriate.

A prosecution will only be brought if it is in the public interest to do so.

2. Our Principles of Inspection & Enforcement

Targeting

We aim to prioritise and direct our regulatory effort effectively using intelligence and risk assessment schemes.

Such risk assessments will have regard to all available, relevant and good-quality data. We will give due consideration to the combined effect of the potential impact and likelihood of non-compliance. This approach will enable us to focus our resources on the areas that need them most and to ensure that persistent offenders are identified quickly.

Proportionality

We will ensure that enforcement action is proportionate to the risks involved, and that the sanctions applied are meaningful.

Accountability

We will be accountable for the efficiency and effectiveness of our activities as outlined in the Regulators Compliance Code.

Fairness and Consistency

We will treat all individuals, businesses and stakeholders fairly.

We will ensure that our enforcement practices are consistent – this means that we will adopt a similar approach in similar circumstances to achieve similar ends though subsequent legislative changes may require us to adopt a different stance for future enforcement action.

We will have regard to national guidelines in our decision-making processes.

We will operate robust prosecution procedures through a prosecution manual including an authorisation process involving senior managers for issuing surveillance as an operational tool only in cases of real need.

We will have a clear audit trail for all our decisions on prosecutions undertaken, including engagement with the prosecutor.

We will endeavour to ensure that enforcement decisions in relation to Local Authority run establishments are free from any conflict of interest. (Any serious breaches shall be brought to the attention of the Chief Executive without delay)

Openness and Transparency

We are committed to the open provision of information and advice in a format that is accessible, easily understood and implemented.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law and those which we recommend as best practice but which are not compulsory.

Where groups or individuals have acted against the law we may use publicity in order to raise awareness, to increase compliance and to improve monitoring of working practises.

We may also publish the results of court actions and certain undertakings.

Supporting the local economy

We recognise that a key element of our activity will be to facilitate and encourage economic progress against a background of protection. Wherever possible, we will work in partnership with small businesses and with voluntary/community organisations, to assist them with meeting their legal obligations without unnecessary expense or burdens being put upon them.

Reducing enforcement burdens

If there is a shared enforcement role with other agencies, e.g. the Environment Agency or the Police we will co-ordinate our actions with these agencies to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

3. Compliance with Home Authority and Primary Authority Principle

The Home Authority Principle enables Powys based businesses, where they trade or provide services that impact beyond Powys, to get advice and support from us on matters such as legal requirements, changes to law and so forth. This usually takes the form of a semi-formal relationship.

In Powys we support the Home Authority Principle, which has been developed to promote good enforcement practise and to reduce burdens on business. The main objective is to create a partnership, which will provide positive benefits to both parties.

We will therefore:

- Provide businesses for whom we are the 'home authority' with appropriate guidance and advice
- Maintain records of our contacts with the 'home authority' businesses to reduce the amount of information they have to provide to us
- Support efficient liaison between local authorities
- Provide a system for the resolution of problems and disputes

In April 2009, the Regulatory and Enforcement Sanctions Act 2008 introduced the Primary Authority Principle – in contrast to the Home Authority Principle, this is a formal relationship.

A Primary Authority is a local authority registered by the Local Better Regulation Office (LBRO) as having responsibility for giving advice and guidance to a particular business or organisation that is subject to regulation by more than one authority. We will give due consideration to any business, based in Powys, that wishes to enter into such an arrangement.

4. Our Enforcement Actions

In deciding what enforcement action to take against an offender we will have regard to the following aims:

- To change the behaviour of the offender
- To eliminate any financial gain or benefit from the non compliance
- To be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned
- For the action to be proportionate to the nature of the offence and the harm/potential harm caused or anticipated to be caused
- To restore the harm caused by regulatory non compliance, where appropriate
- To deter future non compliance

The range of enforcement options available includes the following:

No action

In certain circumstances, e.g. where the risk to, or detrimental impact on the community or environment is small, contravention of the law may not warrant any action though offenders will be provided with sufficient information in identifying their wrong-doing and actions to undertake to avoid further offending.

Indirect action

This may include referral to another authority or agency for information or action.

Verbal or written warning

This may apply where an offence has been committed but is not thought appropriate to take any further action, in which case the suggested corrective action and a timescale will be given together with access to clear guidance notes.

Statutory Notice

These are used as appropriate in accordance with relevant legislation (they usually require offenders to take specific action or to cease certain activities) e.g. suspension, seizure, forfeiture or voluntary surrender of documents.

Fixed Penalty Notices

Certain offences are subject to Fixed Penalty Notices (FPN's) - they are recognised as a low-level enforcement tool. Where legislation permits an offence to be dealt with by way of a FPN, we may choose to administer a FPN on a first occasion, without issuing a warning. This avoids a criminal record for the defendant.

Caution in accordance with the current Home Office circular

This is used to deal quickly and simply with less serious offences and to avoid unnecessary appearances in criminal courts.

A formal or simple caution is an admission of guilt but it is not a form of sentence, nor is it a criminal conviction - it may be cited in court in certain circumstances. For Waste

Services a record of the caution will be sent to other bodies that are required to be notified.

Prosecution

A prosecution will only follow when the threshold of the 'Evidential Test' and the 'Public Interest Test' have both been crossed. We will have regard to the relevant parts of the [Crown Prosecution Service Code of Practice](#).

Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers and all other relevant legislation (and relevant Codes of Practice), including the requirements of:

- Police and Criminal Evidence Act (PACE)
- Criminal Procedure and Investigations Act (CPIA)
- Regulation of Investigatory Powers Act (RIPA)
- Human Rights Act (HRA)

As part of the investigation process, persons suspected of breaching legal requirements will, wherever possible,

- Be requested to attend a formal interview in accordance with PACE
- Be given the opportunity to demonstrate that a statutory defence is available
- Have the opportunity to give an explanation or make any additional comments about the alleged breach

Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated, a report compiled by the investigating officer and the file reviewed by a Manager.

We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, including potential harm and loss and its significance in making the decision.

Proceeds of Crime Actions

Their purpose is to recover the financial benefit that the offender has obtained from criminal conduct.

Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Proceedings are conducted according to the civil standard of proof and are made after a conviction has been secured.

5. What You Can Expect of Us

We will draw up clear service standards for our stakeholders, including customer care, and publicise our performance to those standards.

You are entitled to expect our staff to:

- be courteous and helpful
- identify themselves by name and produce identification if requested
- provide a contact point for any further dealings
- give clear and simple advice
- confirm advice in writing on request, explaining what particular action is required and over a realistic time-scale
- clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- minimise the cost of compliance by requiring proportionate action
- give you reasonable time to comply (unless immediate action is necessary in the interest of health, safety or to prevent evidence being lost)
- notify you if the matter is to be reported for legal proceedings
- advise you of the procedure for making a complaint or representations in cases of dispute
- maintain confidentiality (subject to exchange of information with our enforcement partners through statutory information gateways)

Officers Powers

Our Officers have a wide variety of powers which include, but are not limited to, the power to enter premises and inspect goods, requiring the production of documents or records. and to seize and detain such goods and documents that they believe may be required as evidence.

Officers may also take with them such other persons and equipment as may be necessary when exercising powers of entry.

In certain cases they may exercise an entry warrant issued by Magistrates' in order to gain access to premises.

If individuals obstruct Officers, they may be liable to prosecution.

Legal Action

Before any legal action is taken there will be an opportunity to discuss the case, although if we are considering a prosecution it will be by way of a formal interview.

Where a right of appeal against a formal action exists other than through the courts, advice on the appeal mechanism will be clearly set out in writing at the time the action was taken.

6. Advice and Accessibility

We will constantly look to improve our service delivery through examination of our delivery processes including contact points.

All details of our offices and service contact points, in all sections of Waste Management are available by contacting the Powys Access to Services number 0845 602 7035 or via the details below.

Website : <http://www.powys.gov.uk/index.php?id=77&L=0>

Email : waste.services@powys.gov.uk

The Head of Service is Steve Holdaway who is available at:
steve.holdaway@powys.gov.uk

In Writing Waste Services
County Hall
Llandrindod Wells
Powys
LD1 5LG

Our Commitment to You

This policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is given to:

- right to a fair trial
- right to respect for private and family life, home and correspondence

We are committed to providing open, equal and timely access to our services. If you are unhappy with the service you have received, or we have failed to live up to our promises, managers are always willing to discuss with you the cause of your dissatisfaction, and will endeavour to find a solution.

If you wish to make a complaint or send us a compliment or comment about our service:

- please contact the Head of Service at the address above, or
- you can use Powys County Council's complaints procedure which has a three step guide to disputes, or
- you can talk directly to your councillor.

If you are still not satisfied, and feel you have been caused injustice, we will tell you how to complain to the Local Government Ombudsman. The relevant ombudsman for Wales is available at <http://www.ombudsman-wales.org.uk>. Decisions by the Court Service are not subject to referral to the Ombudsman.

We will continually review our position regarding the use of enforcement options and additional sanctions under the Regulatory Enforcement and Sanctions Act 2008.

Furthermore, as we are continually seeking to improve our standards, this policy is subject to regular review.

Decisions taken by Individual Portfolio Holders

Councillor K.A. Harris

Portfolio Holder for Waste, Climate Change and Welsh Language

Decisions Taken 12 March 2012

Sustainability Integration Tool

DECISION	Reason for Decision:
That the Sustainability Integration Toolkit be adopted for use in the business planning process.	Use of the Integration Tool will enable services to integrate sustainability into projects development in line with the commitments in the Powys Change Plan and the SD Charter
That staff are informed about and supported in the use of the toolkit.	To enable staff to use the toolkit easily and in a consistent way.
That further workshops be held to inform Members and staff about forthcoming legislation and guidance.	To ensure that Powys County Council is prepared for any new legislative requirements or expectations.

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CYNGOR SIR POWYS COUNTY COUNCIL

PORTFOLIO DECISION

March 2012

**REPORT AUTHOR: Heather Delonnette
Sustainable Development Co-ordinator**

SUBJECT: Sustainability Integration Tool

REPORT FOR: Portfolio Decision

Summary

The Council has committed to developing an Integration Toolkit to ensure sustainability issues are considered during the development of policies, strategies and service plans. This is in line with our commitment to making sustainable development our central organising principle as set out in the Welsh Government's Sustainable Development Charter which the Council signed up to in 2010.

An update presentation on progress of the work and the anticipated outcomes was given to Cabinet and Management Team in November. Since then two pilot projects; the Families First Strategy and the Local Development Plan, have been undertaken, using different aspects of the toolkit. In both cases the officers leading on the work have been asked for their comments on the effectiveness and suitability of the tools and modifications have been undertaken light of those comments. The Review stage of the toolkit has also been developed allowing for appraisal of the tools and their benefits to be carried out and further modifications suggested ensuring that the tools remain relevant.

This work is fairly innovative and has been recognised as being so by Jonathan Porritt, author, commentator and founder of Forum for the Future, the largest UK based sustainability charity.

Proposal

It is proposed that the toolkit be adopted by the Council as part of the corporate planning process, as a way of embedding sustainability into policies, procedures and service strategies. The SWOT tool is already used by services when starting the service planning process and the Integration Toolkit's SWOT element would require only minimum extra consideration to ensure sustainability, as well as climate change and environmental, issues are considered at this early stage. The Options Appraisal element can be undertaken relatively quickly and again will enable the issues to be dealt with in a consistent and considered way.

Once the Toolkit has been adopted dissemination of information and support will be undertaken in the most appropriate way to ensure wide take up of the toolkit throughout the organisation. This will include opportunities to hear from officers involved in the pilots about their experiences in using the resources. Further workshops will be held to update Members and staff on forthcoming sustainability and climate change legislation and guidance. Further support will be available from the Sustainable Development Co-ordinator as services start to use the toolkit.

Corporate Improvement Plan

Sustainable development is one of the key principles of the Powys Change Plan. Implementation and use of the Sustainability Integration Tool will contribute to the overall aims of the Plan by aiming to support sustainable thinking from the beginning of programmes and projects.

Options Considered/Available

The need for an Integration Toolkit was instigated by Board as part of the Sustainable Development Strategy in October 2007 and further revised in April 2008. The development and use of the tool was an aim in subsequent Corporate Improvement Plans. At various stages during the development of the resources the advantages and drawbacks of such a resource have been discussed and challenged. Amendments have been made to the toolkit when it was felt to be appropriate to ensure that they were fit for purpose. In the short term it may require more time to develop projects however as staff and Members become more familiar with using the tools. Over time, the benefits for project development and scrutiny should be realised, providing efficiencies and more holistic project management.

Preferred Choice and Reasons

Sustainability and other issues need to be raised at the earliest possible stage, before decisions are taken as this ensures that decisions can be modified according to the needs of the project. Use of the toolkit will allow this to happen in a considered and consistent way with evidence being provided for decisions taken.

The toolkit will also help to ensure that the Council are ready for the requirements of the Sustainable Development Bill being introduced by the Welsh Government in 2013 which will '... make sustainable development the centre of all activities and decisions of the Welsh Government and public bodies in Wales.'

Sustainability and Environmental Issues/Equalities/Crime and Disorder/Welsh Language/Other Policies etc

The toolkit will enable all services using them to consider these issues in an integrated way. This will also contribute to the Council's stated aim of making sustainability central to its working practices and policy development. It will also enable more effective scrutiny of policies and plans. This should also raise awareness of equalities, Welsh language and other issues in the project development process as these are raised in the tools.

Children and Young People's Impact Statement - Safeguarding and Wellbeing

There will be no direct impact on safeguarding children and young people.

Local Member(s)

Not applicable

Other Front Line Services

Not applicable

Support Services (Legal, Finance, HR, ICT, BPU)

The Accountant for the Service commented that the cost of implementation will be met from within existing budgets.

Local Service Board/Partnerships/Stakeholders etc

In the first instance this proposal will have no impact on the Local Service Board, partnerships or stakeholders. However in our role as community leaders we may, in the future, assist our partners in undertaking similar work.

Communications

The toolkit is available on the intranet and details of the case studies will be posted as soon as they are completed. The proposed workshops will raise awareness and it has been arranged to run articles in the staff magazine at appropriate points to inform staff and Members of the work.

Statutory Officers

The Strategic Director, Finance and Infrastructure (Section 151 Officer) has commented, 'I note the proposal is within budget.'

The Strategic Director, Law & Governance (Monitoring Officer) had no comment to make.

Members' Interests

The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should declare it at the start of the meeting and complete the relevant notification form.

Recommendation:	Reason for Recommendation:
That the Sustainability Integration Toolkit be adopted for use in the business planning process.	Use of the Integration Tool will enable services to integrate sustainability into projects development in line with the commitments in the Powys Change Plan and the SD Charter
That staff are informed about and supported in the use of the toolkit.	To enable staff to use the toolkit easily and in a consistent way.
That further workshops be held to inform Members and staff about forthcoming legislation and guidance.	To ensure that Powys County Council is prepared for any new legislative requirements or expectations.

Relevant Policy (ies):			
Within Policy:	Y	Within Budget:	Y

Relevant Local Member(s):	
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Person(s) To Implement Decision:	Sustainable Development Co-ordinator
Date By When Decision To Be Implemented:	From 1st April 2012

Contact Officer Name:	Tel:	Fax:	Email:
Heather Delonnette	01597 826165		heatherd@powys.gov.uk

Background Papers used to prepare Report:

Board decision 16th October 2007
Corporate Improvement Plan 2009-12
Corporate Improvement Plan 2010-14

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