



**PUBLIC PROTECTION
ENFORCEMENT POLICY**

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Amendment Record

ISSUE	DATE	APPROVED	SUMMARY OF CHANGE
1	2003	HoHPP	
2	2005	HOHPP	INCLUSION OF FIXED PENALTY NOTICES FOR NIGHT NOISE AND DOG FOULING OFFENCES.
3	2007	HoHPP	AMENDMENTS TO REFLECT ORGANISATIONAL CHANGES, AMENDMENT TO FSA CODE OF PRACTICE AND INTRODUCTION OF SMOKING BAN LEGISLATION.
4	2008	HoHPP	AMENDMENT TO REFLECT THE REQUIREMENTS OF THE MACRORY REVIEW, HAMPTON PRINCIPLES, STAUTORY REGULATOR'S COMPLIANCE CODE AND TO PROVIDE MORE DETAILED GUIDANCE ON THE ESCALATION APPROACH TO ENFORCEMENT.
5	2011		INCLUSION OF ADVICE ON HEALTH AND SAFETY MATTERS/KEY ADVICE ON PROCEEDS OF CRIME/ANIMAL HEALTH DECISION MAKING PROCESS
Prepared by:		Approved by:	
			Issue No 5

Prosecution and Enforcement Policy

This is the Prosecution and Enforcement policy of Powys County Council's Public Protection Service, which includes Trading Standards, Environmental Health and Community Safety. It provides information on:

- the purpose of our 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 of us
- our accessibility and advice details
- our commitment to you
- complaints, compliments and comments about our 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, and the Regulatory, Enforcement and Sanctions Act 2008.

Within the context of this Policy, '**enforcement**' includes any action taken by officers aimed at ensuring 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 this 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 regulatory functions involve officers carrying out our duties in various ways including: inspection, sampling, test purchasing, testing, investigation and prosecution, but also by informing, advising and educating businesses, consumers.

The purpose of our 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 want to comply with the law. We will endeavour to help these businesses and others to meet their legal obligations without unnecessary expense or burden. When a business 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 relevant 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.

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 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 businesses have acted against the law we may use publicity in order to raise awareness, to increase compliance and to improve monitoring of trade practices.

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 businesses and with voluntary/community organisations, to assist them with meeting their legal obligations without unnecessary expense.

Reducing enforcement burdens

Where there is a shared enforcement role with other regulatory agencies, e.g. Animal Health, the Health and Safety Executive 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.

To ensure that investigations represent the full scope of alleged wrongdoing and to prevent repeated cases on the same matter, we will collaborate with other relevant local authorities and enforcement agencies, particularly where alleged offences have consequences beyond the boundary of Powys.

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 the 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 practice and 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 '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 local 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 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
- to restore the harm caused by regulatory non compliance, where appropriate
- to deter future non-compliance

The range of enforcement options available include 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.

Indirect action

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

Verbal or written warning

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 the recipient to take specific action or to cease certain activities) e.g. suspension, seizure, forfeiture or voluntary surrender of goods/documents.

Health and safety legislation breaches

When circumstances find that enforcement will be undertaken under health and safety legislation, consideration will also be taken of the Health and Safety Executive's Enforcement Policy Statement - . <http://www.hse.gov.uk/pubns/hse41.pdf>

Furthermore, any enforcement decision for health and safety will have been taken through the Enforcement Management Model.

Fixed Penalty Notices

Certain offences are subject to Fixed Penalty Notices (FPN) - they are recognised as a low-level enforcement tool.

Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. This avoids a criminal record for the defendant.

Penalty Notices for Disorder

A Penalty Notice for Disorder (PND) is the fixed penalty option for offences such as the sale of alcohol to a minor.

Seizure

Some legislation permits our Officers to seize goods and documents that may be required as evidence. When we seize goods, we will give an appropriate receipt to the person from whom they are taken. On some occasions, we may ask the person to voluntarily surrender the goods.

Forfeiture

Some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.

Injunctive action under the Enterprise Act

The range of actions under this legislation include the following:

- formal undertakings
- interim orders
- court orders
- contempt proceedings

Review of Licences

Where there is a requirement for a business to be licensed by a local authority e.g. Licensing Act, or other body then a review of the licence or permit may be sought where the activities or fitness of the license holder is in question.

Caution in accordance with the current Home Office circular

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

Taking animals into possession (Trading Standards)

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 will consider taking them into possession and applying for Orders for re-imbursalment of expenses incurred and subsequent disposal.

Prosecution

A prosecution will only be undertaken when the evidence passes the 'Evidential Test' and when it is in the public interest to do so – we will have regard to 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 formally interviewed 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. Applications are made after a conviction has been secured and will be made by service areas based upon legal advice and advice from an accredited financial advisor. A decision on whether to institute proceedings in any particular investigation will not be influenced by the objective of securing monies via confiscation proceedings.

5. What You Can Expect of Us

We will draw up clear service standards for our stakeholders including ones on 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 why action is required and over what 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)

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 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.

Officers' Powers

Our Officers have a wide variety of powers which include the power to enter premises and inspect goods, to require the production of books, documents or records and, when necessary, the power to seize and detain such goods, books 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 a Magistrate 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 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 is 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 services contact points, in all sections of Public Protection, are available by contacting 0845 602 7030 or via the details below.

Website : <http://www.powys.gov.uk/index.php?id=31&L=0>

<http://www.powys.gov.uk/index.php?id=76&L=0>

[_http://csp.powys.org.uk/index.php](http://csp.powys.org.uk/index.php)

Email : public.protection@powys.gov.uk

Council Offices	Council Offices	Council Offices	Council Offices
Neuadd Brycheiniog	Neuadd Maldwyn	The Park	Y Gwalia
Cambrian Way	Severn Road	Park Road	Ithon Road
Brecon	Welshpool	Newtown	Llandrindod Wells
Powys	Powys	Powys	Powys
LD3 7HR	SY21 7AS	SY16 2NZ	LD1 6AA

For consumer advice:- Contact our partner agency Consumer Direct Wales on:- Tel: 08454 04 05 06 - www.consumerdirect.gov.uk

The Head of Service is Steve Holdaway who may be contacted at steve.holdaway@powys.gov.uk

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 had to the following:

- 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 try 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>.

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.

March 2012