

**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.