

Enforcement Policy

Public Protection Service

Flintshire County Council | July 2010

This Policy can be made available in a variety of formats and media on request.

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1.0 | Introduction

Intelligence-led and targeted regulation is essential in promoting fairness and protection from harm. Public Protection services fully recognise that effective regulation needs to be proportionate and flexible enough to support and encourage economic prosperity. Good businesses need good regulators and good regulators work constructively with businesses to ensure fair competition and support thriving local economies.

The Council is committed to promoting efficient and effective approaches to regulatory inspection and enforcement which promotes key regulatory outcomes without imposing unnecessary burdens.

Key Regulatory Outcomes:

- ▶ fewer health inequalities;
- ▶ fewer food poisoning or animal disease outbreaks;
- ▶ fewer accidents, injuries and ill health caused by work;
- ▶ less pollution and other environmental crime
- ▶ safer and stronger communities
- ▶ improved standards of business compliance.

We will therefore adopt a positive, proactive and balanced approach to ensure compliance. This will be achieved through a combination of:

- ▶ advice, information, help and support for businesses which reflects individual business needs and expectations; and
- ▶ intelligence-led, targeted and proportionate interventions where regulatory breaches have been identified.

In this Policy we outline how we propose to work to these principles in practice. We describe our general approach and the circumstances in which serious regulatory sanctions like prosecution will be considered and applied so that local residents and citizens fully understand and support our approach to effective regulation in Flintshire.

We have developed effective policies to deal proportionately with criminal activity which would have a damaging effect on legitimate businesses and in achieving desired regulatory outcomes. However, there is also an expectation that legitimate businesses work with regulators to improve standards of trading thereby supporting the achievement of regulatory outcomes.

This policy is primarily focused on regulation of the business community but a number of regulatory functions involve enforcement against individuals e.g. dog fouling and littering. Where enforcement action is contemplated against individuals we will take into account the relevant principles and standards outlined in this policy.

2.0 | Our Approach - how will we work in practice?

We have adopted accepted principles of effective enforcement. These include:

- ▶ Publishing our Service Standards: we will publish clear and explicit service standards
- ▶ Being Open: we will provide information in clear and simple language and explain how we intend to support legitimate businesses and protect consumers and citizens.
- ▶ Being Helpful: we believe prevention is better than cure and will therefore explore ways to encourage businesses to seek help and advice so we can help businesses 'get things right first time'.
- ▶ Responding positively to complaints about our service or approach: ideally if we get the approach right we should not get many complaints but we have a clear pathway to report and hopefully resolve complaints satisfactorily.
- ▶ Taking proportionate and sensible action where legislative breaches are identified: we will establish the facts and circumstances which led up to the breach, we will consider the action taken to reduce the effect of the breach and we will assess the approach the business proposes to take to avoid future breaches as part of our deliberations around possible sanctions.
- ▶ Being fair and consistent: we will ensure our own policies and practices are fully understood and applied by our officers on the ground. We will invest in their learning and development, and whilst we expect our people to exercise discretion and work to high levels of professional practice, we have developed safeguards to ensure our policies and practice is applied fairly and consistently. The approach includes effective liaison with other regulatory and enforcement agencies and adhering to the latest national guidelines and best practice.

3.0 | Effective Regulation for the 21st Century

3.1 | Supporting Economic Prosperity

Effective regulation and enforcement are critical to supporting economic prosperity. Good regulators are more aware of the issues affecting economic prosperity and the impact that they have on both individual businesses and the local economy if they get the balance of regulation and enforcement wrong. Therefore, this enforcement policy and the way it is implemented fully takes into account the need to support legitimate businesses through a programme of effective advice and information in the first instance to 'help businesses get things right first time'. This approach delivers benefits for regulators and businesses. Our approach really is one of 'prevention is better than cure':

Our approach will involve:

- ▶ Working proactively to develop constructive and trusting relationships with local businesses, particularly new businesses, so that they are confident about seeking help if things go wrong rather than trying to hide things and make matters worse
- ▶ Understanding and taking into account the size, complexity and scope of business operations to provide an appropriate and proportionate level of advice and support, particularly having regard to the impact of regulation on small to medium sized businesses
- ▶ Consulting with local businesses, identifying their needs and expectations and providing an appropriate level of advice and support to meet or preferably exceed those expectations
- ▶ Providing a responsive and effective business advice service so that businesses can get access to high quality people to help them comply with the law through the provision of sensible and pragmatic advice
- ▶ Using intelligence-led and targeted interventions based on an objective assessment of risks so that resources are appropriately directed to areas of the highest risk
- ▶ Developing an effective system for the resolution of disputes so that the right regulatory outcomes can be achieved without creating unnecessary burdens for businesses
- ▶ Systematically and regularly reviewing our policies, strategies and practice in order to ensure they remain relevant and effective in achieving regulatory outcomes without imposing unnecessary burdens on businesses

3.2 | Using Effective Risk Assessment Methods

Effective risk assessment will guide all of regulatory and enforcement activity. It will inform how we use our resources to focus on areas of high risk to that they are used to maximum effect in supporting business and protecting consumers thus leading to improved regulatory outcomes.

We will use risk assessment to:

- ▶ Identify the likelihood of significant risks to health, wealth or wellbeing of local people and communities, the environment and fair trading and economic prosperity; and
- ▶ Ensure that our actions and interventions are based on a detailed analysis of the best evidence available so that resources are effectively targeted at and successful in reducing the highest risks to local people, communities and legitimate businesses

Our risk assessment framework is comprehensive and includes an assessment of the combined effect of:

- ▶ the potential impact of non-compliance on regulatory outcomes; and
- ▶ the likelihood of that non-compliance occurring.

Our intelligence-led, evidence-based approach will inform the development of a programme of planned inspections, the balance between preventative and compliance activity and the application of enforcement techniques and the appropriate sanctions in accordance with clearly defined policies.

In evaluating the likelihood of non-compliance, we will consider the following factors:

- ▶ previous levels of business compliance and the identification of potential future risks;
- ▶ the existence of effective risk management systems;
- ▶ evidence of regular and effective third party certifications; and
- ▶ management competence and willingness to comply.

3.3 | Focusing on Prevention

A key focus of our approach to prevention will involve developing positive and constructive working relationships with businesses through existing networks and contacts and through the creation of a business support function and an aspiration to create single point of contact for all regulatory enquiries. We recognise that small businesses, in particular, can be overwhelmed by the scale and complexity of legislation covering their business operations. Our approach is to provide easy access to advice, provide simple, clear and concise information and to provide follow-up advice where it is needed. Where national guidance exists, we will promote this to ensure consistency in its application, but where no national guidance exists we will endeavour to consult with businesses to ensure locally developed guidance meets their specific needs, where this is sensible and practical.

In all our dealings with businesses we will aim to:

- ▶ inform them about any new legislation likely to effect their business as soon as we know about it and will apply the same principle in respect of changes to existing legislation;
- ▶ where necessary and appropriate, provide sector-based information, advice and guidance;
- ▶ provide general information, advice and guidance to make it easier for businesses to understand and implement what needs to be done;
- ▶ ensure the information, advice and guidance we provide is simple, clear and concise and is available in a range of formats and media; and
- ▶ regularly and systematically assess the quality and accessibility of our information, advice and guidance to ensure it remains accurate, reliable and fit for purpose by assessing satisfaction levels with businesses.

We will always try to ensure that, in all our dealings with businesses, we differentiate between specific legal requirements and guidance/best practice aimed at delivering improvements above minimum standards. However, we will actively encourage businesses to strive to achieve higher standards and help to support those that wish to take this approach.

Advice services will generally be provided free of charge. Where charges are applicable we will make this clear in advance of the provision of any of these services to the business community. For example, the development of a Primary Authority relationship has scope for charging.

3.4 | Targeting Inspection Visits

No inspection without a valid reason - We will try not to undertake any inspection visits to business premise unless there is a specific and justifiable reason for so doing. Any programmed inspection visits will be informed by the use of a robust and transparent risk assessment framework. The sharing of information and intelligence and the development of effective communication channels to provide evidence of risk will be a key element of our approach to targeted inspection. Intelligence analysis and the application of the risk assessment framework will be used to deploy resources and direct inspection effort where both a compliance failure would pose a serious risk to the community and the business is likely to continue to operate illegally.

Timely and effective feedback - At the conclusion of any inspection visit, our officers will give a verbal update of his/her findings in order to seek agreement on the proposed corrective actions. This will include an outline of good practice as well as areas of improvement. Any advice, guidance or specific instructions will normally be confirmed in writing.

Joint Inspection Visits - We will try to coordinate our inspection programmes so that businesses are not subject to multiple inspections where this is sensible and practical. We will develop our inspection programmes to ensure that we achieve the right balance between providing the right information and advice at the right time against the need to avoid contact with different specialist inspectors. We will also work collaboratively with other regulatory agencies to ensure that, wherever practicable, our respective inspector programmes do not cause unnecessary burdens for businesses. This will include the development of information sharing and inspection protocols where the shared regulatory outcomes can be achieved through a co-ordinated approach to inspection visits.

3.5 | Reviewing Processes for Requesting Information

Keeping requests for information to a minimum - We will try to ensure that we do not ask businesses for information unless it is absolutely necessary to verify compliance with a key legislation and we will develop information systems to try to avoid any situations where we ask for the same information more than once.

Offering choice in the way businesses are able to provide information - Where information has to be provided we will try to ensure that the systems and processes for providing such information are clear, simple and accessible. In particular, we will develop appropriate web-based applications to allow for electronic submission and to offer a choice of access routes based on an analysis of business expectations.

Data Protection - We will also try to ensure that any information or data we hold is accurate, regularly cleansed and safely stored.

Using Intelligence-led and Targeted Enforcement - We recognise that the majority of businesses we come into contact are legitimate and want to engage constructively with regulators. We have described our approach to prevention through advice, information and guidance to this group of businesses. However, we also recognise, as do the vast majority of the business community, that there is no place for those who wish to operate outside the regulatory framework.

Therefore, our approach will be different for individuals and businesses who:

- ▶ operate fraudulently or unfairly; and/or
- ▶ persistently use unfair trading practices and fail to follow advice; and/or
- ▶ put at risk the health, safety and well being of staff, customers and consumers; and/or
- ▶ persistently fail to follow advice about legal requirement despite significant attempts from the regulator to ensure compliance; and/or
- ▶ attempt to gain a competitive advantage over legitimate businesses through fraudulent or unfair trading practices.

This approach to formal enforcement action will only be considered after all other reasonable efforts to achieve compliance have been exhausted, except where immediate

action is necessary to prevent or respond to a serious breach, imminent risk to health or where the circumstances dictate that such a course of action would itself put the proposed enforcement action at risk.

Therefore, we will satisfy ourselves that reasonable efforts have been made to:

- ▶ achieve compliance including: the use of positive incentives to deliver improvement in appropriate circumstances;
- ▶ change the behaviour of the offender;
- ▶ eliminate any financial gain or benefit from non-compliance
- ▶ take into account the type of offence, the nature of the offender and ensure the action considered is appropriate and proportionate;
- ▶ mitigate against the harm or damage caused by the offending behaviour; and
- ▶ deter future non-compliance;
- ▶ and that all those efforts have failed and there is no alternative to formal enforcement action.

We will ensure that all of our officers are fully aware of, and committed to, following the policies and principles outlined in this document through a programme of learning and development and management review processes. Our aim is to ensure that the policy is applied fairly and consistently across all service areas so that we achieve high compliance levels without the need for heavy-handed enforcement practice.

4.0 | What happens when the preventative/advisory approach fails to achieve compliance?

4.1 | Decision to undertake formal enforcement

When the advisory approach fails to secure an adequate level of compliance formal enforcement action will be the next step. Where formal enforcement action is being considered (Step 3 below) we will always try to explain reasons for the proposed action. A decision to take formal enforcement action will only be taken after all reasonable efforts to secure compliance have been exhausted, except where the non-compliance is of a very serious nature and immediate action is necessary and appropriate. Any such decision made will be communicated in a timely and effective manner.

4.2 | Levels of Enforcement Action

Where evidence of legislative non-compliance has been established the following hierarchy of approach will be considered:

Step 1 | Promotion

As part of our ongoing programme of advice, information and assistance we will seek to persuade by negotiation the adoption of good practice and to increase the businesses understanding of the legislation in order to secure improved levels of compliance. This will involve the broad range of activities described in this document and through direct contact with businesses and trade associations.

Step 2 | Informal Warnings

Will be used when there is evidence of non-compliance but the nature of that non-compliance does not warrant formal action. For example, this might be technical issues resulting from a lack of understanding or misinterpretation of the advice, information or guidance which has been provided. The nature of the non-compliance together with the corrective action necessary to put the matter right will be explained verbally and confirmed in writing together with a deadline for completing the corrective action. The business will be afforded the opportunity to have these decisions reviewed by a senior manager if they believe the warning was unjustified or inappropriate.

Step 3 | Formal Enforcement Action

This includes the issuing of statutory notices, written undertakings and enforcement orders; refusal to grant or revocation of a licence or registration; the issue of cautions, fixed penalty notices, penalty notices for disorder and/or prosecution. This course of action will be taken in accordance with statutory legal procedures, relevant codes of practice and any national professional guidance e.g. the Code of Practice for Crown Prosecutors to name one. Additionally, where members of the public need protection from

behaviour that is likely to cause, harassment, alarm or distress, the Council may seek an Anti-Social Behaviour Order either as an independent action or following conviction.

Where formal enforcement action is contemplated (Step 3) we will apply two 'tests: the Evidential Test and the Public Interest Test. For the Evidential Test we will satisfy ourselves that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. This is an objective test that means a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. The Public Interest Test will be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors usually depend on the seriousness of the offence or the circumstances of the suspect.

4.3 | Statutory (Legal) Notices

Many pieces of legislation enforced by the Council provide for the service of statutory notices. These notices require a person, business or organisation to comply with specific legal requirements. Where a formal notice is served, the method of appealing against the notice (i.e. if the recipient feels that the notice is unjustified or excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right and outline the consequences for failure to comply with the notice.

In general, failure to comply with a properly written and served statutory notice will render the recipient liable to prosecution. In some cases the Council is able to, and will generally carry out works to comply with the notice and recover the cost of doing so from the recipient of the notice. In some circumstances both prosecution and service of a notice may be appropriate.

4.4 | Written Undertakings and Enforcement Orders

Where an individual or organisation persistently fails to comply with the law, the Council may seek a written undertaking from that person that they will cease the action complained of. In such circumstances, the Council may determine that no further formal action will be taken.

In cases where an individual or organisation has breached or has refused to provide a written undertaking to cease the action complained of, an application to a court may be made for an enforcement order, or for other formal action in accordance with the relevant legal provisions.

4.5 | Fixed Penalty Notices

A fixed penalty notice may be used as a means of disposing of the offence by means other than prosecution. It is the offender's opportunity to avoid a conviction if they pay a penalty instead. Non-payment of a penalty notice is generally not an offence in its own right and should a recipient not pay the penalty offered, prosecution will be necessary for the actual offence.

The Council will comply with any relevant guidance on the use of fixed penalty notices. In particular, the following conditions will be satisfied:

- ▶ (a) there must be evidence sufficient to give a realistic prospect of conviction;
- ▶ (b) the offence is not too serious and is of a nature suitable for being dealt with by a penalty notice

4.6 | Simple Cautions

Under certain circumstances, a caution may be an appropriate alternative to prosecution. This option will be considered before prosecution. A caution is a serious matter. It is recorded on the Central Register of Convictions and may be used to influence any decision whether or not to institute proceedings if the person should offend again. It may be referred to in any subsequent court proceedings. It will not be referred to in respect of any conviction recorded more than three years earlier.

Cautions serve the following purposes:

- ▶ (a) to deal quickly and simply with less serious offenders;
- ▶ (b) to avoid unnecessary appearance in criminal courts;
- ▶ (c) to reduce the chance of offenders re-offending.

We will comply with Home Office guidance on the cautioning of adult offenders and in particular before issuing a caution, the following conditions must be satisfied:

- ▶ (a) there must be evidence of guilt sufficient to give a realistic prospect of conviction;
- ▶ (b) the suspected offender must admit the offence, usually by signing a declaration;
- ▶ (c) the suspected offender must understand the significance of a caution and
- ▶ give an informed consent to the caution.

4.7 | Prosecutions

The Council will use discretion in deciding whether to initiate a prosecution. Where the circumstances justify it, prosecution without prior warning may take place.

The Council will consider prosecution when:

- ▶ it is appropriate in the circumstances, as a way to draw attention to the need for compliance with the law, especially where there would be a normal expectation of a prosecution, or where,
- ▶ through the conviction of offenders, others may be deterred from offending; or
- ▶ there is the potential for considerable harm arising from the breach; or
- ▶ the gravity of the offence, taken together with the general record and approach of the offender justifies it.

The decision to prosecute will always take account of the criteria set down in the 'Code for Crown Prosecutors'.

Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction taking account of any defence that may be available, and it must be in the public interest.

The following public interest criteria will normally be taken into account when deciding on the relevance of legal proceedings, although this list is not exhaustive:

- ▶ The prevalence of the type of offence
- ▶ The need for a suitable deterrent
- ▶ The risk of danger or injury to the public
- ▶ The failure to comply with a statutory notice or respond to advice about legal requirements
- ▶ The disregard of legal requirements for financial reward
- ▶ Significant financial loss, potential or actual, to a third party
- ▶ A history of similar offences
- ▶ Persistent breaches of legislation
- ▶ Where fraud, gross negligence or guilty knowledge is a factor
- ▶ Minor breaches of a number of statutes

Where possible an offender will be told as soon as sufficient evidence is obtained that a prosecution may follow. All prosecutions will be brought without unnecessary delay.

The Council will aim to maximise our effectiveness by working with other authorities and other agencies whenever appropriate, sharing intelligence where it is lawful to do so and mounting joint operations where that would bring benefits.

Outside agencies who we work with include:

- ▶ Police,
- ▶ Environment Agency
- ▶ Health and Safety Executive
- ▶ Food Standards Agency
- ▶ Gambling Commission
- ▶ Vehicle and Operator Services Agency -VOSA
- ▶ Fire Service
- ▶ HM Revenue and Customs
- ▶ Defra/State Veterinary Service
- ▶ Office of Fair Trading
- ▶ Assets Recovery Agency
- ▶ The enforcement arms of trade protection organisations such as the Federation against Copyright Theft

Where there has been a breach of the law leading to a work-related death, the enforcement authority will liaise with the Police, Coroner and the Crown Prosecution Service (CPS) and if there is evidence of manslaughter (including corporate manslaughter) pass the case to the Police or, where appropriate, the CPS.

4.8 | Proceeds of Crime

In appropriate cases, an application may be made under the Proceeds of Crime Act for confiscation of assets to recover the financial benefit that the offender has obtained from a criminal conduct. Proceedings are carried out in accordance with the civil standard of proof and applications are made after a conviction has been secured but before the offender has been sentenced.

4.9 | Gathering Evidence

Regulatory bodies are empowered to gather evidence by numerous means, including, where appropriate, covertly (without the targeted individual/s being aware of surveillance). Remote CCTV and other recording devices may be utilised. In each case appropriate authorisation will be sought prior to the undertaking of covert surveillance in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA).

4.10 | Equality and Diversity

Equality and diversity issues have been considered when drawing up this policy. It reflects the Council's values, and is in line with anti-discrimination legislation. It will be applied in accordance with the legal obligations of the Council irrespective of disability, gender, race, religion, age, sexual orientation and marital status or any other grounds which would constitute unfair or unreasonable discrimination.

The policy will have no detrimental impact on minority groups and such groups will be afforded the same level of protection from crime and anti-social behaviour and crime specifically targeted at minority groups will be appropriately addressed.

The Council will regularly review our policies and practice to ensure a continuing commitment to providing services that do not discriminate against minority groups.

5.0 | General Principles of Officer Conduct

In addition to the principles set out in this Policy, officers will always present themselves professionally and courteously. Officers will, as the circumstances allow, announce who they are and in what capacity they are acting to someone in authority in the business. However, there may be occasions when officers legitimately delay identifying themselves until a later stage of an investigation, particularly where they are engaged in authorised covert operations. Officers will carry, and show their identity card or authorisation as appropriate.

Officers will engage with individuals and groups fairly, constructively and effectively without discrimination.

Documents can be provided in other formats such as audio, large print or CD.

6.0 | Having Clear Accountability for our Decisions and Actions

The Council has a clearly defined scheme for delegated authority in relation to regulatory services and enforcement policy. Public Protection Services are generally led by an officer at Assistant Director level usually designated as Head of Public Protection.

The Head of Public Protection provides elected Member with professional advice and support in addition to leading and managing the service. Regulatory outcomes are normally defined within a Service Strategy/Service Plan framework which also outlines the operational priorities and activities for the next 12 months.

Service strategies are normally published and generally informed by the needs and expectations of key client groups: consumers and businesses. Needs and expectations are normally identified following formal consultation with these client groups and are reflected in service plans. Regular and systematic work is undertaken throughout the year to assess satisfaction levels and to target improvement activity where satisfaction levels are found to be unsatisfactory.

Additionally, Service Plans generally contain detailed information about:

- ▶ Service standards e.g. response times, opening hours etc
- ▶ Regulatory outcomes
- ▶ Service priorities, projects and enforcement activities

7.0 | Complaints Procedure

The Council has a formal complaints procedure in the event that businesses or residents wish to complain about the quality of service they have received. Where the complaint cannot be satisfactorily resolved, through the Council's Complaint's Procedure, the complainant can usually complain further to the Local Government Ombudsman.

8.0 | Feedback and Comments

We welcome feedback on this or any of our policies – please direct any feedback or comments on this Enforcement Policy to:

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