

**RHONDDA CYNON TAF COUNTY BOROUGH  
COUNCIL**

**CORPORATE ENFORCEMENT POLICY**



**OCTOBER 2018**

**POLICY APPROVED ON 16.10.18**

## Introduction

The Rhondda Cynon Taf Corporate Plan 2016-20 explains the way ahead for the Council at a time when local government nationally is going through enormous change. Our vision is for a County Borough that has high aspirations, is confident and promotes opportunity for all.

In order to achieve this, the Council is focussed on three priorities:

1. Economy: Building a strong economy
2. People: Promoting independence and positive lives for everyone
3. Place: Creating neighbourhoods where people are proud to live and work

The Corporate Plan vision, priorities and principles support the seven Well-being Goals identified in the Wellbeing of Future Generations (Wales) Act 2015.

The Council will support, direct and enhance its services to and with our local communities, working closely with our partners. We will encourage people to comply with the law in the interests of our wider communities. When this is undermined, and the Council has legal powers to protect our communities from harm, we will use them. The use of these legal powers is *enforcement*, and this ranges from the servicing of notices requiring people to carry out certain actions, to prosecution which could result in fines, imprisonment, and being prohibited from carrying out certain activities.

This Corporate Enforcement Policy is intended to establish a uniform approach to enforcement throughout the Council, without placing too onerous a burden on local businesses, organisations, consumers, and the public. The policy has been developed with the Enforcement Concordat's principles of good enforcement as its foundation as well as the principles of the Regulators' Code, together with the aim of clearly setting out the Council's approach to enforcement of its legal powers. The policy will be periodically reviewed by senior officers and any necessary amendments will be proposed in the light of best practice and changes to legislation. Any amendments will be approved by the Council's Cabinet prior to implementation.

Enforcement of legislation is undertaken by several services of the Council and covers a broad range of issues. In adopting this policy, the Council intends to apply its legal powers consistently and fairly, whatever the circumstances.

The Council's enforcement activities impact on all themes within the Corporate Plan, ranging from taking action against offenders, to ensuring that people have access to information concerning their legal rights. Effective enforcement has an important role to play in helping the Council achieve its objectives. A directory of Council Groups/Divisions involved in enforcement is presented as Appendix 1, to illustrate the range of our current enforcement activities. When allocating resources to the relevant functions the Council will have regard to the National Enforcement Priorities for Wales

In recognition of this, the Council is working to improve its approach to enforcement, through better coordination of resources, improvements in joint working, and partnerships with other stakeholders, such as the Police. Where the law permits, the Council will exchange information with its partners, and between Council services, in

the interests of the prevention and detection of crime and the protection of public safety.

The Council will undertake its enforcement functions to achieve the following aim and objectives:

### **Aim of Enforcement Policy**

To clearly set out the Council's approach to enforcement, to support the delivery of the Rhondda Cynon Taf Corporate Plan and associated plans concerning the well-being of those who live and work in the County Borough. The Council aims to work with those it regulates and seeks to promote compliance by a variety of means. These range from providing support and advice to encourage compliance, to securing prosecutions and prohibitions where appropriate and necessary to protect more vulnerable local people from harm, and in the interests of our wider communities. We are committed to avoiding imposing unnecessary regulatory burdens and to assessing whether similar outcomes could be achieved by less burdensome means.

This policy is intended to provide guidance for officers, businesses, consumers and the public, but it does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

Certain Council enforcement services currently have their own enforcement policies or enforcement guidance that relate to their own specific service areas, such as planning and development, noise enforcement, parking and food and feed enforcement policies. These individual policies may contain a high level of detail about when and how that service will carry out a particular type of enforcement. In these circumstances the service will still need to comply with the guidance in this Corporate Enforcement Policy, but their enforcement policy will provide specific details for the enforcement of that particular area of legislation. If there ever arises a conflict between the individual enforcement policies/ guidance and the Corporate Enforcement Policy, this Corporate Enforcement Policy shall take precedence. Copies of service-specific enforcement policies are available on the Rhondda Cynon Taff website or can be obtained on request from the relevant Council service.

### **Objectives**

To ensure that all enforcement activities are:

1. Undertaken in accordance with the principles of good enforcement specified by the Enforcement Concordat.
2. Compatible with the convention rights specified by the Human Rights Act 1998, to protect the rights of the individual.
3. Managed in an efficient manner.
4. Taken promptly and without unnecessary delay.

5. Undertaken consistently by all services of the Council.
6. Undertaken in a fair, independent and transparent manner, with each case being considered on its own merits.
7. Not influenced by colour, ethnic origin, race, gender, disability, sexuality, religion, marital status, age, political beliefs or preferred language.
8. Not influenced by improper or undue pressure from any source or by inappropriate or illegal practices by the officer.
9. Aligned to the Rhondda Cynon Taf Corporate Plan and to each service's Delivery Plan.

### **Equality and Diversity**

The council and its officers will take all reasonable and practicable steps to prevent and eliminate unlawful discrimination and encourage good relations between all parties, treating all those involved with equal respect, both when corresponding with those individuals and businesses and during enforcement activities.

This will be done irrespective of the individual's ethnic origin, gender, age, marital status, sexual orientation, disability, gender reassignment, religious beliefs or non-beliefs, language, nationality, responsibility for any dependents or any other reason that cannot be shown to be justified.

This policy is bilingual and will be provided in any other language or format with sufficient notice. Officers are aware of and respect cultural requirements and when necessary and with prior notice, will offer suitable meetings and appropriate translation or interpretation services.

When dealing with juveniles or persons who are vulnerable, whether due to learning difficulties, physical or mental illness or in some other way, due regard will be taken of their vulnerability and any current codes of practice to ensure that these persons are treated fairly.

### **The Principles of Good Enforcement – Local Government Concordat on Good Enforcement**

Since the introduction of the Regulators' Code 2013, the Concordat on Good Enforcement only applies officially to Council enforcement services that are not covered by the Regulators' Code. However in order to demonstrate best practice all Council enforcement services will still comply with the principles of the Concordat.

### **Policy**

This Council has signed up to the UK and local government Concordat on Good Enforcement, which commits us to good enforcement policies and procedures. This document supplements the Concordat, by setting out an additional statement of the

Council's policy on enforcement. The following principles of the Concordat will be adhered to:

### **Standards**

We will draw up clear standards, setting out the level of service and performance the public and business people can expect to receive. These standards will be developed in consultation with other relevant interested parties, where appropriate. We will publish these standards and our annual performance against them. The standards will be made available to local businesses and others who are regulated.

### **Openness**

We will provide information and advice in plain language on the rules that apply, and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives, where appropriate. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties in relation to legislation that the service enforces, by responding to enquiries and visiting individuals when requested. We will clearly explain the nature of any non-compliance, the advice that we give, the actions required and why the decisions are taken.

In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful business practices or criminal activity so, where appropriate, we may publicise the results of specific court cases, both on our website and via press releases. We will follow any relevant guidance, such as from the Ministry of Justice, when deciding to publish information on sentencing outcomes.

We will undertake our enforcement duties in accordance with the legislative requirements placed on the Council in respect of the Welsh Language. This includes providing services and communications through the medium of Welsh and in compliance with the Welsh Language Standards applicable to the Council. We will provide interpreters for those people who do not have English as their first language, if requested to do so by them.

### **Helpfulness**

We believe that "prevention is better than cure", and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us, and we will encourage businesses to seek advice/information from us. As part of the Council's Digital Strategy, many services and information are available online to ensure a prompt and accessible service outside of normal working hours. Applications for approval of establishments, registrations, planning consultations etc will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

## **Proportionality**

Any enforcement action that we take will be proportionate to the risks posed to the public, property and the environment. We will minimise the costs of compliance for business, by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action. When carrying out our activities we will have regard to the National Enforcement Priorities for Wales.

We will take particular care to work with small businesses and voluntary and community organisations, so that they can meet their legal obligations without unnecessary expense, where practicable.

When dealing with individual members of the public, the concept of proportionality will also apply, in so far as the relevant legislation permits. We will attempt to identify and contact all individuals concerned with each case, where possible, and take action that balances the benefit to the complainant or public against the cost or inconvenience to those concerned.

## **Consistency**

We will carry out our duties in a fair, equitable and consistent manner. While Officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies. This will be achieved through staff development and training, and the use of written protocols and procedures where appropriate.

## **Complaints about Service**

Complaints will be dealt with in accordance with the Council's Corporate Comments, Compliments and Complaints Procedure. Details of the Comments, Compliments and Complaints Procedure are available online and will be provided to persons or businesses on request.

We will provide well-publicised, effective and timely complaints procedures, easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

If anyone has any comments on this policy or has any complaints about how it is being operated in a particular instance then he or she should bring those issues to the attention of a senior officer in the service area in which the officer is working.

## Procedures

All officers who carry out enforcement work will carry appropriate documentation to show that they are authorised to do so by an appropriate senior officer. This will be done in compliance with the General Scheme of Delegation under the Council's Constitution.

In circumstances where no formal action is to be taken, advice will be given clearly and in plain language and will be confirmed in writing on request. An explanation will be given as to why remedial work is required and over what time-scale. Legal requirements will be clearly distinguished from suggested best practice, codes of practice, guidance and other advice.

Officers will be encouraged to promote compliance with legal requirements, by raising awareness of relevant standards and legal requirements, by means of press-statements, distributing leaflets, providing online communication, including the use of social media, face-to-face contact and business and community partnerships.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference before deciding on the best approach, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed or where this is likely to defeat the purpose of the proposed enforcement action). However if we are considering a formal action this discussion might need to take place by means of a formal interview.

Where immediate action is considered necessary, an explanation of why such action is required will be given at the time, and confirmed in writing, in most cases within 5 working days and, in all cases, within 10 working days.

In some circumstances businesses and individuals might wish to challenge a regulatory decision made by an enforcement officer. Some legislation contains a statutory mechanism for appeal, such as making an appeal to the magistrates' court in relation to certain statutory notices. In cases where there are rights of appeal against formal action, information on the appeal mechanism will be clearly set out in writing and provided at the time the action is taken and, wherever possible, will be issued with the enforcement notice.

If there are no relevant mechanisms within the legislative process that cover the particular action taken by the officer, some service areas operate their own appeal procedures. Details of such appeal procedures and how to access them will be provided on request. The intention of such appeals procedures is to allow affected persons to challenge the advice they have been given or the enforcement-related actions taken by the investigating officer. The appeal procedures do not allow a business or individual to appeal against a decision to prosecute them or to offer them the opportunity to accept a simple caution, because the activities of the UK Courts are fully compliant with Human Rights legislation.

## Conduct of Investigations

When officers are investigating breaches of legislation, subject to the requirements of the legislation, they will be able to make use of any statutory powers that are available to them under the specific act or regulations. These powers can include entering premises to inspect goods, services, procedures, facilities or documentation, taking samples, making test purchases and seizing items. Officers will comply with any associated guidance or codes of practice under the particular legislation. Often the legislation will include an offence that is committed by any person who obstructs an authorised officer or fails to comply with a reasonable requirement made by the officer. When exercising enforcement powers officers will also have regard to the Powers of Entry Code of Practice 2014 produced by the Home Office, when the code applies to the particular power.

If there is a victim who has been directly affected by an offence, we will encourage the person to make a Victim Personal Statement (VPS), which is a statement written in the person's own words to explain how the crime has affected them. It can explain the effect that the crime had on the victim's life physically, emotionally, financially or in any other way. The victim is entitled to say whether or not they would like to have the VPS read aloud in court if a suspect is found guilty. They can decide whether to read their VPS aloud themselves or have it read aloud by someone else and we will comply with any such request.

As well as using such powers officers may need to speak to individuals and, in the more serious case, interview persons under caution. Any such interview under caution will take place in compliance with the requirements of the Police and Criminal Evidence Act 1984. In the most serious cases officers may make arrangements for a potential defendant to be arrested by the police to facilitate the investigation. Some legislation provides a statutory time limit from the date of the offence or sometimes from the date when it was discovered. In these circumstances the Council cannot commence legal proceedings after such a time limit has expired.

As well as the complying with the requirements of the legislation governing the issue under investigation, officers will carry out their investigations in compliance with the following legislation and in accordance with any relevant associated guidance or codes of practice, in so far as they relate to the Council:

- Police and Criminal Evidence Act 1984;
- Criminal Procedure and Investigations Act 1996;
- Human Rights Act 1998;
- Regulation of Investigatory Powers Act 2000;
- Criminal Justice and Police Act 2001;
- Protection of Freedoms Act 2012; and
- Investigatory Powers Act 2016

These acts and the associated guidance control how evidence is collected and used and provide a range of protections for individuals and potential defendants.

The officers that carry out the investigations will do so under the management of a more senior officer.



Officers are required to conduct themselves in compliance with the Council's Anti-fraud, Bribery & Corruption Policy and Procedure and the Bribery Act 2010

## **The Principles of Good Regulation and the Regulators' Code**

The Legislative and Regulatory Reform Act 2006 requires local authorities to have regard to the Principles of Good Regulation when exercising regulatory functions specified by an order made under the Act. (These functions mainly relate to the legislation enforced by Environmental Health, Licensing and Trading Standards staff.)

These principles are that we will exercise our regulatory functions in a way that is:

- 1) Proportionate –so that activities reflect the level of risk to the public and enforcement action taken relate to the seriousness of the offence;
- 2) Accountable – so that activities are open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- 3) Consistent – so that advice to those regulated is robust and reliable and respects advice provided by others and, where circumstances are similar, endeavouring to act in a similar way to other local authorities;
- 4) Transparent – so that those regulated are able to understand what is expected of them and what they can anticipate in return;
- 5) Targeted –so that resources are focused on higher risk enterprises and activities, reflecting local need and national priorities;

For the areas of legislation enforced by Environmental Health, Licensing and Trading Standards, we will have regard to the principles of the Regulators' Code published by the Government in 2013 including the following:

### **Supporting regulated businesses to comply and grow**

We will try to avoid imposing unnecessary regulatory burdens on businesses through our regulatory activities and we will assess whether the desired outcomes could be achieved by less burdensome means. We will only adopt a particular approach if the benefits justify the costs and it entails the minimum burden compatible with achieving the objectives. Our policies and practices will encourage and promote compliance but, in doing so, will try to minimise the negative economic effect of our activities and the cost of compliance. We will choose proportionate approaches to the businesses we regulate, based on such relevant factors as the business's size and capacity and the nature of their activities. We will ensure that our officers have the necessary knowledge and skills to support those we regulate and to enable them to choose proportionate and effective approaches.

### **Engaging with those we regulate and hearing their views**

In responding to non-compliance we will clearly explain what is non-compliant, the advice being given, the actions required or the decisions taken by us and we will give the reasons for doing so.

When considering enforcement action in response to a non-compliance we will, where appropriate, provide an opportunity to discuss the advice, requirements or decision and take this dialogue into account to ensure we are acting in a proportionate and consistent way. However this will not apply where we can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where to

provide such an opportunity is likely to defeat the purpose of the proposed enforcement action. We will provide an impartial appeal procedure for an appeal against a regulatory decision or a failure to act in accordance with the code and we will give a written explanation of the right to appeal or make a representation. As well as the appeal procedure, we will make available the Council's Comments, Compliments and Complaints Procedure so that complaints can be made about the conduct of our officers. We will consider the impact of our policies and service standards on businesses, so we invite views from businesses, citizens and others about our policies and service standards.

### **Basing our regulatory activity on risk**

We will take an evidence-based approach to determine the priority risks to ensure that the allocation of our efforts and resources is targeted where they would be most effective in addressing these priority risks. Such risk assessments will inform our approach to regulatory activity including inspection programmes, business advice and enforcement sanctions. We will make use of any evidence-based risk assessment methodology schemes that are devised and approved by relevant Government Departments for our specific service areas, in order to decide the frequency of inspections and visits to check compliance. Where the risk assessment methodology scheme allows the use of 'earned recognition', when carrying out risk assessments we will take into account the results of any visits carried out by outside auditors under an external verification scheme; if guidance directs, inspection and intervention frequency will be reduced accordingly..

We will ensure that inspections and other visits to check compliance will only occur in accordance with a risk assessment methodology, except where visits are requested by businesses, where visits are made to check that businesses are rectifying non-compliances or where we act on relevant intelligence or complaints. In those circumstances we will still be able to carry out compliance visits outside of the frequencies stated in the appropriate risk assessment methodology schemes. In addition we may use a small element of random inspection in our programme.

When we carry out a revisit to check that non compliances have been rectified we will expect this to have happened, and for the business to demonstrate that they have improved their systems to prevent similar non compliances happening in the future. Should a business require additional time to resolve a non compliance, they are encouraged to discuss this with the officer concerned. If non compliances have continued we will consider taking more formal enforcement action.

We will focus our greatest inspection efforts on businesses where our risk assessment shows that a compliance breach would pose a serious risk to a regulatory outcome and there is a high likelihood of non-compliance by businesses. We will provide feedback to businesses about the results of our visits including, where appropriate, feedback on the positive aspects of the visits. We will encourage and reinforce good practice. When carrying out these visits we will have regard to any published inspection plans and assured advice for businesses that are in a Primary Authority Partnership.

If the business under investigation is in a registered Primary Authority Partnership under the Regulatory Enforcement and Sanctions Act, we will comply with the requirements of the Act when we are considering taking enforcement action against them. In particular we will consult with the Primary Authority and take into account any assured advice that they have provided, notify them of any proposed enforcement action and comply with the statutory procedure if the Primary Authority does not consent to us taking this action.

At every step of the decision making process we will choose the most appropriate type of intervention or way of working with businesses, including when targeting checks on compliance or taking enforcement action. If the performance of a business is seen to represent a greater or lesser risk than other businesses of a similar type, we will make a change to their risk rating when this is allowed by the relevant risk assessment methodology. We will recognise the compliance record of businesses, including any relevant data on their compliance or evidence of the business being subject to any relevant external verification, so that we can consider using earned recognition approaches. We will review the effectiveness of our regulatory activities in delivering the desired outcomes and will make any necessary adjustments accordingly.

### **Sharing information about compliance and risk**

If possible, and in compliance with the General Data Protection Regulation, we will collect information from businesses once and try to use it many times. When determining what data we require from businesses we will endeavour to reduce business costs, where possible, by varying data requests according to risk, limiting collection to specific businesses or sectors, reducing the frequency of data collection, obtaining data from other sources, allowing electronic submission and requesting only data which is justified by risk assessment. In order to help target our resources and activities and to minimise duplication we will share information about businesses with other regulators when the law allows this.

### **Making information, guidance and advice available to businesses**

We will provide and direct to general information, advice and guidance to make it easier for businesses to understand and meet their legal responsibilities and we will provide it in clear, concise and accessible format using plain language. Where possible we will look to utilise any relevant national guidance. When providing advice and guidance we will distinguish legal requirements from suggested best practice and we will try not to impose any unnecessary burdens. When responding to requests for advice we will provide the advice necessary to support compliance. In doing this we will respect relevant advice that has been provided by other enforcement agencies. If there is any disagreement with another regulator over the advice provided we will discuss this to reach agreement with the other regulator. Businesses may seek advice from us on non-compliances without directly triggering an enforcement action, as long as the business shows a willingness to resolve the non-compliance. The Council will stand by the advice that we provide so that it can be relied on and we will communicate any update to the advice when this is appropriate.

Information, advice and guidance shall be provided bi-lingually where language preference is unknown, or in Welsh where the business identifies this as their preferred language. Communicating with us in Welsh will not lead to a delay.

If a business wishes to enter into a formal Primary Authority Partnership arrangement with us under the Regulatory Enforcement and Sanctions Act 2008, or a more informal Home Authority arrangement, we will use our best efforts to achieve a satisfactory arrangement.

### **Ensuring our approach is transparent**

Individual service areas will publish a set of clear service standards about:

- How we communicate with those we regulate and how we can be contacted;
- Our approach to providing information, guidance and advice;
- Our approach to checks on compliance and protocols for their conduct;
- Details of the risk assessment frameworks we use to target our checks;
- Our enforcement policy;
- Our fees and charges;
- Our appeals procedure;
- Our complaints procedure;

These service standards will be available on the council website and will be provided on request.

On a regular basis we will publish:

- Feedback from those we regulate, such as satisfaction surveys;
- Data about complaints made about our regulatory activities;
- Data about appeals made against our decisions;

### **Applicability of the Code**

The Regulatory Enforcement and Sanctions Act 2008 states that the regulator must have regard to the code when developing policies and operational procedures that guide their regulatory activities. However it does not state that the Code applies directly to the work of an officer in carrying out investigations and enforcement activities in individual cases. Nevertheless we expect that our officers should operate in accordance with our general policy or guidance on inspections, investigations and enforcement activities.

There is an active duty on the authority to have regard to the Code, so we need to comply with its provisions or be able to explain why we have chosen another course of action. In certain instances we may conclude that a provision of the Code is either not applicable or is outweighed by another relevant consideration and so we will not follow that provision. However, we will ensure that any decision to depart from the code is based on material evidence. We will record the decision and the reasons for it.

It should also be noted that our duty to have regard to the Code is subject to any other legal requirement affecting how we exercise our regulatory functions.

Further information is included elsewhere in this document to cover other issues relating to the above points in the Regulators' Code.

### **Enforcement Options**

A number of enforcement options are available to the Council. Officers are authorised to enforce legislation in accordance with the General Scheme of Delegation under the Council Constitution. The appropriate option will be determined, following careful consideration of the circumstances of each individual case. The action that the Council decides to take will be influenced by the particular circumstances of the case, and this is likely to include the attitude of the business or person.

Our enforcement staff will interpret and apply legal requirements and enforcement policies consistently and fairly. We will comply with any requirements imposed by the legislation under which we are acting. To help to ensure consistency we will make use of any relevant codes of practice or national guidance provided in relation to legal requirements.

Our enforcement actions will

- Aim to change the behaviour of the offender;
- Aim to eliminate any financial gain or benefit from non-compliance;
- Consider what is appropriate for the particular offender and regulatory issue;
- Be proportionate to the nature of the offence and the harm caused;
- Aim to restore the harm caused by regulatory non-compliance, where appropriate;
- Aim to deter future non-compliance;

### ***Informal Action and Advice***

In circumstances where minor breaches of legislation have been identified, formal action may not be considered appropriate. There may be no significant risk and the offence may appear to have been committed by a genuine mistake or accident and, from the individual's / enterprise's past history, it can be reasonably expected that informal action will achieve compliance. Therefore formal action may not be in the public interest. Informal action may consist of a verbal or written warning. The decision to do so will be at the discretion of the investigating officer.

We will clearly identify any contraventions of the law and give advice on how to put them right. The time allowed for rectification will be reasonable and take into account the seriousness of the contravention. Sometimes we will give advice about good practice, but we will clearly distinguish between what must be done to comply with the law and such good practice. Any advice will be given clearly and in plain language. If we provide advice to a business or individual we will stand by that advice. Also we will respect any advice that has been provided by other regulators or enforcement agencies. On completion of the time period that has been allowed for the

implementation of any such advice we will follow this up to ensure that it has been complied with. Failure to comply with identified legal requirements could result in an escalation of enforcement action.

We recognise that where a business has entered into a Primary Authority Partnership, the primary authority may provide assured advice and support, regarding certain legislation and the Council will take such advice into account when considering the most appropriate enforcement action for us to take. We may discuss any need for compliance advice and support with the primary authority. We will comply with the statutory requirement to notify the primary authority of any proposed enforcement action.

We recognise that there may be a need for ongoing compliance advice and support to be provided to a business or person against whom we have taken formal enforcement action so as to prevent future breaches.

## ***Formal Action***

### **1. Statutory Notices**

Certain legislation allows statutory notices to be served to require offenders to take specific actions or cease certain activities within specified time periods. These can include prohibition, improvement, suspension and remedial action notices. In some cases officers can impose a statutory notice to initially close a premises for a short period of time, but officers will then need to apply to the courts for an order to extend the period of closure. A statutory notice will clearly set out the actions that must be taken and the timescale within which they must be taken. Failure to comply with statutory notices can be an offence and in some instances may allow the Council to carry out works in default and charge the person served with the notice for the cost of such work being carried out. These notices will be used where there is a significant contravention of legislation; there may be a lack of confidence in the response of the individual / enterprise to an informal approach; or there may be a history of non-compliance. The consequences of non-compliance could be potentially serious. Action will consist of the service of an appropriate legal notice, signed by a duly authorised officer, when the investigating officer deems this to be appropriate and in compliance with the requirements of the legislation. When deciding whether or not to serve a statutory notice, officers should take into account any financial burden that this could cause for the Council. All notices issued will include details of any applicable appeal procedure. Some notices issued in respect of premises may be affixed to the premises and/ or registered as local land charges.

### **2. Fixed Penalty Notice, Penalty Notices for Disorder and Penalty Charge Notices**

Certain legislation allows the issuing of fixed penalty notices, penalty notices for disorder, penalty charge notices or excess charge notices in relation to these offences. In some instances the breach for which the notice can be issued is not a

criminal offence but is only a civil breach, so a prosecution would not be available for such a breach. However failure to pay the amount imposed by the notice may result in the person being pursued in the County Court for non-payment of a debt.

In the remaining instances the notices give the offender the opportunity to avoid prosecution by payment of a prescribed amount of money in recognition of the breach. They are recognised as being a low-level enforcement tool, whereby they do not create a criminal record for the offender. Choosing to pay the required penalty is not an admission of guilt and so the issuing of these notices cannot be used as evidence in any future court proceedings. Payment of such a penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. The decision to issue these notices will be at the discretion of the investigating officer. In some circumstances, particularly where the breaches are serious or recurrent, it may be that a prosecution is more appropriate than the issuing of such a notice. Officers will follow relevant guidance on issuing such notices to juveniles, with the action taken being influenced by the offender's age and the circumstances of the offence. Such notices will only be issued where there is adequate evidence to support a prosecution. Failure to pay the amount imposed by the notice may result in the offender being pursued in the County Court for non-payment of a debt. In some circumstances, the Council may choose to use its discretion in initiating prosecution proceedings for the original offence that led to the issuing of the original notice. All notices issued will include details of any applicable appeal procedure.

### **3. Seizure and Forfeiture Proceedings**

Certain legislation enables authorised officers to seize goods, equipment or documents, where they may be required as evidence for possible future court proceedings or to prevent further offences from being committed. When items are seized an appropriate receipt will be given to the person from whom the items are taken. The decision to seize items will be at the discretion of the investigating officer, subject to the requirements of the legislation.

In certain circumstances officers will make an application to the Magistrates' Courts for forfeiture of the goods. Forfeiture may be used in conjunction with seizure and / or prosecution, where there is a need to dispose of the goods, vehicles or equipment to prevent them being used to further an offence or to prevent them re-entering the market place.

In animal welfare cases where certain animals are suffering or are likely to suffer if their circumstances do not change, the council may consider taking them into our possession and applying to the court for orders for the reimbursement of the relevant expenses incurred.

### **4. Injunctive Action**

In certain circumstances officers may seek injunctive orders in the civil courts to stop infringements of a wide range of laws, which seriously affect the rights of others. They



can be used to deal with repeat offenders, dangerous goods or significant harm to consumers in general. Sometimes these matters can be dealt with by informal undertakings with the offender, but otherwise applications may be made to the civil courts for an injunction to stop these detrimental activities. In urgent cases officers may be able to apply for an interim order without a full hearing. The decision to seek an injunction will be made by a senior officer who will consider the seriousness and circumstances of the case.

In some cases, where the law allows, we will accept voluntary undertakings from an offender who agrees to stop or make changes to relevant activity, rather than us applying for a formal injunction. These will only be accepted where we have sufficient confidence that the terms of the undertaking will be delivered. We are more likely to accept a voluntary undertaking when it is offered early. We will be unlikely to accept an informal undertaking where we have already decided that a prosecution is required in a particular case.

In certain circumstances officers are required to seek enforcement orders after issuing some enforcement notices, in order to provide the court with an opportunity to consider the restrictions imposed by the notice.

For consumer protection issues injunctions may be sought under the Enterprise Act. Where consumers have suffered detriment as a result of certain breaches of consumer protection legislation, the Council may also apply for an order under the Enterprise Act to obtain redress for consumers who have suffered loss or to achieve compliance so as to reduce the likelihood of future breaches or to provide information to enable consumers to exercise greater choice. Where the investigation relates to persistent anti-social behaviour, after liaison with the Council's Anti-Social Behaviour Co-ordinator, officers may apply to the Magistrates' Court for a Criminal Behaviour Order. Officers may also apply for Criminal Behaviour Orders against persons who have been convicted of a criminal offence. Contravention of an order issued by the courts could result in proceedings for contempt of court, which may be punishable by a fine or imprisonment.

## **5. Refusal, Revocation, Review and Suspension of Licences and Permits**

The Council issues a number of licences and permits and also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take certain steps. In certain circumstances the Council may decide to refuse to issue such a licence,

Where there is a requirement for a business, activity or property to be licensed by the Council, the Council usually has the power to suspend, review or revoke a variety of licences as well as amending it to attach a range of conditions. Sometimes - and particularly in relation to taxi drivers - a licence may be immediately suspended where there is an immediate public danger or the continuation of the licence would be likely to bring the licensing system into disrepute. In respect of commercial premises that are licensed such actions can usually only be taken by the Licensing Committee. Various enforcement agencies or relevant local residents can call reviews of

commercial licenses. Licence holders have the right to attend review or revocation hearings and to be informed of their right of appeal against the Committee or local authority decision.

The Council is responsible for issuing Environmental Permits to operators who carry out certain types of industrial process. The permits contain conditions intended to prevent or minimise pollution by using the best available techniques. The Council has powers of enforcement to ensure the regulated facilities are strictly monitored and controlled. Enforcement powers include revocation and suspension of permits, and in serious cases prosecution for non compliance with an enforcement notice.

When considering licence applications the council may take previous breaches and enforcement action into account.

## **6. Prohibitions**

Where very serious offences are committed or offences are repeated, the Council has powers in some areas to apply to the courts to prohibit people from carrying out certain activities. In deciding to take this action, a senior officer of the Council will have regard to all the relevant factors that are listed in relation to prosecutions.

In addition, where an offender continually breaks the law by selling tobacco products to underage persons, officers may apply to the court for an order to prohibit a premise or person from selling tobacco for a period of time.

## **7. Proceeds of Crime Act Orders**

The council recognises that the use of the powers given within the Proceeds of Crime Act (POCA) to recover criminal assets can make a significant contribution to the disruption of criminal activity. Therefore the council promotes the use of financial investigations as an integral part of criminal investigations and this may lead to confiscation of the benefits of the crime. Such work is carried out by Financial Investigators who have been suitably accredited by the National Crime Agency. The use of the Proceeds of Crime Act is not just for serious criminals, but it can apply to any case of acquisitive crime. Acquisitive crime describes offences where the perpetrator derives material gain from the crime. The council will actively work with other law enforcement agencies that conduct financial investigations in order to maximise the amount of assets and money seized under POCA legislation.

Officers may make applications under the Proceeds of Crime Act for confiscation of assets of offenders in relevant cases. The purpose is to recover the financial benefit that the offender has obtained from their crimes. Proceedings only take place after a criminal conviction has been obtained, but they are conducted according to the civil standard of proof. Proceeds of Crime Act proceedings will only take place after we have considered the factors relating to the tests in the Code for Crown Prosecutors in reaching our initial decision to prosecute. We will consider any relevant factors when deciding whether to commence a Proceeds of Crime Investigation or whether to continue with it or change it if further evidence comes to light during the investigation.

It should be noted that the Courts can instruct us to carry out a Proceeds of Crime investigation when they consider that this is appropriate.

As part of an investigation, Accredited Financial Investigators will be able to apply for the orders that are available under the legislation, including applying for Restraint Orders to restrain assets and for Production Orders to obtain financial information. Accredited Financial Investigators will also be able to carry out seizures of cash of £1000 and above and specific high-value goods such as art works, when it is found whilst officers are lawfully on premises. This is for the purpose of investigating the origins of the cash with a view to applying for a Forfeiture Order at a Magistrates' Court. In a similar manner Accredited Financial Investigators may be able to seize property that otherwise might disappear, which could be used to satisfy a confiscation order.

## **8. Civil Sanctions**

Certain legislation gives the Council the power to impose various civil sanctions.

### **8.1) Monetary Penalties**

Some legislation enables officers who consider that an offence or breach has been committed to issue various types of notices imposing a financial penalty; these are often referred to as penalty notices. Monetary penalties are not criminal fines and do not appear on an individual's criminal record. In some instances the amount of the penalty is variable, between specified upper and lower limits, and is determined by the Council, but in some instances it is a fixed amount. Normally the payment of the penalty amount within a specified period of time will prevent the Council from taking legal proceedings, but if such payment is not made the Council will then be able to institute a prosecution.

The form and content of such notices varies between different legislation. Any notice that is issued will be in the form required by the particular legislation. Almost invariably the notice will require details of the circumstances that amount to the offence, the amount of the penalty, the period during which proceedings will not be taken for the offence and details of how and where to pay. Usually the legislation will allow the Council to amend or withdraw such notices if it is appropriate to do so.

Some legislation requires the Council to issue a notice of our intention to issue a 'penalty notice' and to allow the offender to make representations and objections within a specified period. Once the person makes representations or does nothing we will then make a final determination within the specified period, based on all the circumstances and the person's response. If we set the level of the penalty we might decide to impose the original amount, or to modify this amount, or not to impose the penalty at all, perhaps where the response indicates that the person has an appropriate defence or because imposing a monetary penalty would be unproductive. If we decide to proceed we will issue a final notice as required by the particular legislation.

Some legislation enables the person to discharge their liability by making a payment of a reduced amount of money by a specified early date.

When we are deciding the appropriate level for those penalty notices that allow the Council to decide the amount, we will take into account all of the factors in the case, including any ones specified by the legislation. In doing so, we will often be aiming to remove any benefit from non-compliance and to deter future non-compliance. In appropriate cases when reaching such a decision our approach is likely to be:

- a) We will estimate the benefit derived from the non-compliance; (If we are unable to do this or do not consider it appropriate to use it as a starting point, we will use the most relevant of the level of fixed penalty available or the maximum fine that can be imposed by a magistrates' court for the offence);
- b) We will add on an appropriate deterrent component based on any aggravating or mitigating factors;
- c) We will adjust the amount downwards if it exceeds the statutory maximum; (We will also consider making adjustments to deduct the cost of the person complying with any non-monetary requirement, if we have imposed such requirements.)

The types of matters that we will consider to be aggravating factors include degree of blameworthiness; ignoring earlier advice and guidance; lack of prompt attention to rectify identified failings; and history of non compliance. The types of matter that we will consider to be mitigating factors include preventative measures taken; cooperation with the Council during the investigation (such as voluntarily providing information or assistance); voluntary reporting of the non compliance; any restoration taken; personal circumstances that might otherwise reduce blameworthiness (e.g. age, health issues); and other case specific mitigating features

The Council will comply with any requirements specified in the particular legislation regarding the issuing of all such notices. If relevant national guidelines are produced on the use of any such civil sanctions under particular legislation we will comply with them. We will also comply with any appeal mechanism specified by the legislation.

Fixed monetary penalties are mainly appropriate for clearcut offences where advice and guidance has already been given and has not been complied with, or lax regard has been given to that advice and guidance. This is likely to be in circumstances where we judge that recourse to formal procedures is warranted to signal that the business operator or individual needs to pay more serious attention to its obligations and to prioritise its compliance efforts. They are not appropriate for more serious cases of non-compliance, for example where the impact of non-compliance is significant or where there is evidence of intentional disregard for the law, or repeated non-compliance. Variable monetary penalties are likely to be imposed for those cases where we aim to remove the benefit from non-compliance and to deter future non compliance, for instance where the impact of non-compliance is significant or there is evidence of intentional disregard for the law.

## 8.2) Non-monetary requirements

Some legislation enables officers who consider that an offence or breach has been committed to impose non-monetary requirements, where the precise nature of the sanctions is decided by us. In these circumstances we may impose non-monetary requirements in combination with monetary penalties. We will usually use such non-monetary requirements for more serious cases of non-compliance, such as when

there is evidence of an intentional disregard for the law or repeated non-compliance. Where the Council decides to impose non-monetary discretionary requirements it will clearly set out what steps should be taken by the business and the time period within which they must be completed.

Non-monetary requirements include compliance notices, restoration notices and stop notices. Compliance notices are sometimes known as improvement notices. They are requirements for the person to take steps to ensure that a breach does not continue or recur. Restoration notices are requirements for the person to take steps to restore harm caused by non-compliance. Stop notices prohibit the person from carrying out an activity until the person has taken the specified steps to remove the risk of serious harm. In each case we decide what those steps will be and the time period within which they must be completed. Different names may be used in different legislation for notices serving similar purposes.

We will consider such non-monetary requirements in all cases where we believe that it is warranted to impose sanctions but a monetary penalty alone is unsuitable or is not available. The primary purpose of imposing these types of requirements is to secure the person modifying his or her behaviour, so as to halt the on-going breach or to address the causes that give rise to a breach or to restore any harm that was caused by the activity.

The form and content of such notices varies between different legislation. Any notice that is issued will be in the form required by the particular legislation. Almost invariably the notice will require details of the circumstances that amount to the offence, details of what steps the person is required to take and the period during which this should be done. Usually the legislation will allow the Council to amend or withdraw such notices if it is appropriate to do so.

Some legislation requires the Council to issue a notice of our intention to issue a non-monetary requirement and to allow the offender to make representations and objections within a specified period. Whether the person makes representations or does nothing within that period, we will then make a final determination on the requirement that we will impose within the specified period, based on all the circumstances and the person's response. We might decide to impose the original or a modified version of the requirement, impose another requirement or not to impose the requirement at all; perhaps if the response indicates that the person has an appropriate defence or imposing the requirement would be unproductive. If we decide to proceed we will issue a final notice as required by the particular legislation. Some legislation may allow us to serve an enforcement costs recovery notice at the same time as serving the final notice to allow us to recover all the costs we incurred, including investigation costs, administration costs and costs of obtaining expert advice.

If the person does not fully comply with a non-monetary requirement by the required date then a breach of some notices may be an offence in itself for which we can prosecute. However often we can impose a financial penalty, sometimes known as a non-compliance penalty. In setting a non-compliance penalty usually it is the Council that decides the amount to be paid, subject to the statutory maximum and any

prescribed criteria. In doing this we will aim to set the amount at a level to reflect the amount of costs avoided by the failure to comply with the original notice. When the person has completed some, but not all, of the required steps, we will aim to set the amount of the non-compliance penalty at the full costs of complying with the requirements, less the costs incurred in carrying out the steps already taken. Some legislation imposes a requirement on the Council to serve a notice of intention to serve a non-compliance penalty. Once the person who receives such a notice of intention has made representations or does nothing we will then make a final determination within the specified period, based on all the circumstances and the person's response.

The Council will comply with any requirements specified in the particular legislation regarding the issuing of all such notices. If relevant national guidelines are produced on the use of any such civil sanctions under particular legislation we will comply with them. We will also comply with any appeal mechanism specified by the legislation.

Service of a compliance notice will mainly be appropriate in order to stop an offence from recurring where compliance can be achieved by relatively simple adjustments to the process or labelling and in serious cases to avoid further supply of non-compliant product to consumers or distributors.

Service of a stop notice will mainly be appropriate when we are satisfied that the activity is causing serious harm or is presenting a significant risk of causing serious harm to human health or the environment or the financial interests of consumers. However it may not be appropriate to do so if it is not in the public interest or the person or business has taken immediate voluntary steps to cease a particular course of action.

In some situations the legislation may allow voluntary enforcement undertakings to be offered by the business as a formal agreement about the steps, that they proactively offer to carry out, to ensure that a breach will be rectified and/or recurrences will be prevented. The Council may accept such voluntary undertakings, but will take any failure to honour such voluntary undertakings very seriously and enforcement action is likely to result.

We consider that it may not be appropriate to accept an enforcement undertaking when there is insufficient detail as to how non-compliance will be resolved or if the level of non-compliance is not fully recognised or when factors are present that indicate that a prosecution or another civil sanction is more appropriate.

## **9. Simple Cautions**

A simple caution is an alternative to prosecution, where the circumstances are such that the caution is likely to be effective and the use of a caution is appropriate to the offence. It is an admission of guilt, but it is not a form of sentence, nor is it a criminal conviction. Simple cautions are issued by a senior officer and can only be given to an offender who is over 18, where there is sufficient evidence to give a realistic prospect of a conviction and it is considered to be in the public interest to use a simple caution

rather than institute criminal proceedings. Additionally, the offender must admit guilt and consent to a caution in order for one to be given. There is no legal obligation for any person to accept the offer of a simple caution, but failure to receive a caution will normally result in prosecution for the offence.

When deciding whether or not to prosecute consideration may be given to issuing a simple caution, but it may be decided that issuing a caution is not appropriate for the circumstances of the case.

Normally it is not appropriate to administer a second simple caution to the same offender for a similar offence within a period of two years.

If a person is offered a simple caution but declines to accept it or fails to attend, then the case must proceed to prosecution. At this stage, as the person has already declined to accept a caution it will not be appropriate to offer the caution to the person for a second time.

If the offender commits a further offence the caution may influence the decision whether or not to take a prosecution. A simple caution can be cited in court, so it may influence the severity of any sentence imposed by the court. Accepting a simple caution may have consequences if an individual seeks certain types of employment.

The Criminal Justice and Courts Act 2015 imposes statutory restrictions on the use of Simple Cautions. This legislation restricts the use of Simple Cautions for indictable-only offences, for certain specified either-way offences (but these do not relate to legislation enforced by the council) and for other offences where the offender has been convicted of or cautioned for a similar offence within the two years before the offence was committed, unless, in each case, it is decided that exceptional circumstances apply.

Under the Criminal Justice and Courts Act 2015 the Council is only permitted to conclude that there are exceptional circumstances justifying a simple caution if satisfied that, were the offender to be convicted of the offence, the court would be unlikely to impose an immediate or suspended custodial sentence or a high-level community order. Furthermore in assessing whether such exceptional circumstances exist account must be taken of the following non exhaustive factors: a) the level of culpability of the offender; b) any harm which the offence caused; c) any aggravating or mitigating factors; d) the offender's antecedents; e) the overall justice of the case and whether the circumstances require the case to be dealt with by prosecution and f) the range of sentences appropriate to the facts of the case. Officers must treat a previous offence as being similar to the present offence if it was of the same description or of a similar nature, e.g. they both involve dishonesty.

If all of the above requirements are met, the senior officer must consider whether the seriousness of the offence makes it appropriate for disposal by a Simple Caution and whether a Caution is likely to be effective in the circumstances. Generally the more serious the offence the more likely a prosecution will be required. Officers should consider any aggravating and mitigating factors when assessing seriousness and also

consider whether the sentencing guidelines indicate a likely sentence of imprisonment or a high level community order. The senior officer may conclude that the public interest does not require the immediate prosecution of the offender.

## **10. Prosecutions**

We recognise that most persons wish to comply with the law. However there are occasions when we will take enforcement action, including prosecution against those who flout the law, or who deliberately or persistently fail to comply, or who act irresponsibly or where there is an immediate risk to health and safety. In deciding what action to take, a number of factors will be taken into consideration, including:

- The nature of the alleged offence
- The seriousness of the alleged offence.
- The previous history of the business or persons involved
- The likelihood of a defendant establishing an available statutory defence
- Action taken by business to prevent any recurrence
- Any explanation offered and, as far as the law allows, the circumstances and attitude of the business towards compliance
- What course of action will best serve the public interest of the community

(Please also see the public interest factors under the Code for Crown Prosecutors.)

The decision to prosecute is taken by a senior officer who is an appropriately authorised under the Council's scheme of delegation:

- In accordance with this Policy;
- In accordance with the Code for Crown Prosecutors;
- And in accordance with statutory requirements, taking into consideration all other codes of practice.

Having decided to prosecute our policy is to select offences that reflect the seriousness and extent of the offending, give the court adequate powers to sentence and impose appropriate post-conviction orders and enable the case to be presented in a clear and simple way.

On some occasions prosecutions may be taken in the criminal courts at the same time as civil proceedings are also taking place in the civil courts.

In circumstances where the defendant wants to plead guilty to some, but not all of the charges, the Council will only accept such a plea if we think that the court is still able to pass a sentence that matches the seriousness of the offending. If the defendant pleads guilty to the charges but on the basis of facts that are different to the Council case and where this may significantly affect the sentence, we will usually invite the court to hear evidence to determine what happened and then sentence on that basis

A conviction will result in a criminal record. The court may impose a fine and/ or a community order and/or impose a prison sentence in respect of particularly serious breaches. The court may also order the forfeiture of seized items or non compliant



goods. In some circumstances a prosecution may lead to the disqualification of individuals from driving or from acting as company directors.

## **Code for Crown Prosecutors**

We use two tests under the Code for Crown Prosecutors to determine whether a prosecution or simple caution is a viable and appropriate method of disposal and the case must pass both tests before commencing a prosecution or using a simple caution.

We must be satisfied under the evidential test that, after an objective assessment of the evidence, including the impact of any defence and any other information that has been put forward by the suspect or on which he or she might rely, there is sufficient evidence to provide a “realistic prospect of conviction” against each defendant on each offence. This means that an objective, impartial and reasonable jury or bench of magistrates or a judge hearing the case alone when properly directed and acting in accordance with the law is more likely than not to convict the defendant of the alleged offence. As part of this test we will assess whether the evidence can be used in court, whether it is reliable and whether it is credible. We will look closely at any evidence where we are not sure that it can be used or whether it is reliable or credible.

If the case passes the evidential test we must apply the public interest test to decide whether it is in the public interest to take the action. A prosecution will usually take place unless there are public interest factors tending against prosecution which outweigh those in favour or we are satisfied that the public interest may be properly served by using another method of disposal. We will balance factors both for and against prosecution carefully and fairly. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

In deciding the public interest we will consider the following questions:

1. How serious is the offence that has been committed?
2. What is the level of culpability of the suspect?
3. What are the circumstances of and the harm caused to the victim?
4. Is the suspect under 18 years old?
5. What is the impact on the community?
6. Is prosecution a proportionate response?
7. Do sources of information require protecting?

The questions are not exhaustive and not all of them are relevant in every case. In answering these questions some factors that we will consider are listed below, but again this list is not exhaustive:

- The seriousness the offence The suspect has acted fraudulently or is reckless or negligent in their activities or there is significant risk to public health & safety or to the environment;
- The amount of gain for the offender or the amount of loss to the victim;
- The offence was committed in order to facilitate more serious offending;

- The suspect's level of culpability;
- Whether the suspect is, or was at the time of the offence, suffering from any significant mental or ill health;
- If there is evidence that a prosecution is likely to have an adverse effect on the victim's physical or mental health;
- The level of the suspect's involvement in the offence;
- The suspect was a ringleader or organiser of the offence;
- The extent to which the offence was premeditated and/ or planned;
- Whether the suspect has previous criminal convictions or out-of-court disposals;
- Whether the offending has taken place whilst the suspect was on bail or subject to a court order;
- Whether the offending is likely to be continued, repeated or escalated;
- The presence of any motivation, any form of discrimination or hostility;
- The suspect has attempted to conceal their identity, whether directly or indirectly, to make it more difficult to identify or trace the person;
- The suspect deliberately obstructs an officer;
- The offence was committed as a result of a genuine mistake or misunderstanding;
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- The suspect made a prompt acknowledgement of guilt;
- The suspect has put right the loss or harm that was caused, but must not avoid prosecution or an out-of-court disposal solely because he or she pays compensation or repays the sum of money he or she unlawfully obtained;
- The court is likely to impose a nominal penalty;
- The level of vulnerability of the victim;
- Whether a position of trust or authority exists between the suspect and the victim;
- If the offence was committed against a victim who was at the time serving the public;
- The views of the victim about the impact that the offence has had, which may include the views of the victim's family;
- The suspect's age or maturity;
- Where the offender is under 18 whether a prosecution is likely to have an adverse effect on the young person's future that is disproportionate to the seriousness of the offending;
- The level of impact of the offending on the community Whether prosecution is proportionate to the likely outcome, including the cost to the council and the wider criminal justice system;
- Whether the case is capable of being prosecuted in a way that allows effective case management;
- The seriousness and consequences of the offending can be appropriately dealt with by an out-of-court disposal which the suspect accepts and with which he or she complies;

Special care should be taken with cases where details may need to be made public that could harm sources of information;

When we assess the public interest we will not simply add up the number of factors on each side to find out which side has the greatest number. Each case will be considered on its own facts and its own merits. We will decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment of the public interest. It is quite possible that one factor alone may outweigh a number of other factors that tend in the opposite direction. We will not assume that the absence of a factor necessarily means that it should be taken as a factor tending in the opposite direction. Although there might be public interest factors tending against prosecution, sometimes we might consider that a prosecution should still go ahead so as to allow the court to consider those factors when deciding the sentence to be passed.

The final decision on whether or not to prosecute in a specific case will be made by a senior officer who has been authorised under the Council's General Scheme of Delegation to institute a prosecution. He or she will only do so after a thorough review of the evidence and circumstances of the case have been carried out. If a decision is made to prosecute, where the law allows we will always seek to recover the costs of the investigation and the legal proceedings.

If an offence has been committed by a body corporate, where the law allows, we will consider prosecuting directors or managers or other company officers when the offence has been caused by the negligence, consent or connivance of such a person. In such circumstances we will take action against the most appropriate body, be it the company, the director or both.

## **11, Orders imposed by the courts that are ancillary to the prosecution**

At the successful conclusion of a prosecution we will apply for ancillary court orders in all appropriate cases. Listed below are some of the ancillary orders that a court may make following a conviction:

- Criminal Behaviour Orders;
- Disqualification from driving;
- Disqualification of directors;
- Compensation orders;
- Forfeiture orders;
- Proceeds of Crime Act confiscation orders;
- Proceeds of Crime Act cash detention orders

## **Charging suspects**

There may be circumstances when a suspect has been arrested by the police although the offence is being investigated by the council. After the suspect has been interviewed at the police station the investigating officer might consider that it is appropriate to charge the offender with the offences at the police station rather than to report the suspect so that a summons can be issued at a later date. Such a request

will be considered by a senior officer who is authorised to institute a prosecution; if the senior officer is satisfied that the evidential and public interest tests are met he or she will instruct the investigating officer to charge the suspect with the offence(s) at the police station.

Exceptionally there might be circumstances when a suspect has been arrested by the police and the seriousness of the offence indicates that he or she should be kept in custody, but insufficient evidence to meet the evidential test is currently available to the Council. In such cases we will apply the threshold test if

- There are reasonable grounds for believing that further evidence will become available within a reasonable period;
- The seriousness or circumstances of the case justify the making of an immediate decision on charging;
- There are continuing substantial grounds to object to bail and it is proper to do so in all the circumstances of the case;

Under the first part of the threshold test we must be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence. If the reasonable suspicion part is satisfied we will then consider the second part of the test. Under this we must be satisfied that there are reasonable grounds for believing that the continuing investigation will produce further evidence, within a reasonable period of time, so that all of the evidence together is capable of establishing a realistic prospect of conviction. To do this we will consider the nature, extent and admissibility of such evidence, the charges it will support, the reason why the evidence is not already available, the time required to obtain the further evidence and whether any consequential delay is reasonable in all the circumstances.

If the senior officer is satisfied that the above threshold test is satisfied, then he or she will instruct the relevant investigating officer to charge the suspect with the offence(s) at the police station. We will keep such a decision to charge under review and, as soon as possible, we will apply the full evidential and public interest tests to the case.

### **Working in Partnership with other Enforcement Agencies**

For some areas of our services, we have a shared or complementary enforcement role with other agencies. On occasion it will be more appropriate for other enforcement agencies or other local authorities to deal with particular breaches of legislation, so officers may pass details of the offence to such other parties. In carrying out these shared duties, we will still comply with our Enforcement Policy, but the other agencies will maintain the right to take any enforcement action that they consider to be necessary.

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

We will work closely with our partners including the Police, the Environment Agency, the Health & Safety Executive, the Food Standards Agency, the Competition and Markets Authority, and the Department for Environment, Food and Rural Affairs/ National Resources Wales, other local authorities and other enforcement agencies. We will exchange information on enforcement activities with our partner organisations and we will do so in accordance with any established methods of information sharing and legal requirements, including the provisions of the Data Protection Act 2018, General Data Protection Regulation 2018 and the Crime and Disorder Act 1998 and any information sharing protocols, codes of practice or memoranda of understanding that exist.

## **Review**

The Council welcomes feedback on this policy, in particular from affected parties, so that we can consider the impact of our policies on individuals and businesses. We strive to monitor the adherence of our officers to this policy. The policy will be reviewed regularly and we will consider the inclusion of suggested improvements wherever possible.

Suggested revisions to this policy will be considered and proposed by relevant Council senior officers. The Council's Cabinet will then decide whether to approve the changes.

## **Conclusion**

This enforcement policy supports the delivery of the Rhondda Cynon Taf Corporate Plan, developed with our communities and in the interests of our communities. It sets out our approach to encourage compliance, as well as action that will be taken when necessary and appropriate, to protect more vulnerable local people and the wider interests of our communities.

This enforcement policy will be regularly reviewed and updated/developed, as required by changes in legislation or guidance. This will include, where appropriate, consultation with and consideration of the views of other interested parties, relevant bodies and stakeholders in the enforcement process. Consultation may take place through the development of partnerships with other agencies or organisations.

This policy is designed to deliver the best possible enforcement service to the residents and business community of Rhondda Cynon Taf County Borough Council. It embraces the principles of good enforcement specified by the Government's Enforcement Concordat, the Regulators' Code and reflects the rights of the individual protected by the Human Rights Act 1998 and associated legislation. We aim to provide a service that is efficient, consistent, fair and transparent.

## APPENDIX 1 - ENFORCEMENT DIRECTORY 2018

<b>Service Area</b>	<b>Nature of Enforcement Activity</b>
<b>Housing Enforcement</b>	<ul style="list-style-type: none"><li>• Abandonment of waste</li><li>• Boundary walls</li><li>• Drainage</li><li>• Environmental information</li><li>• High hedges</li><li>• Illegal deposits of controlled waste, duty of care, waste management</li><li>• Licensing of houses in multiple occupation</li><li>• Noise from vehicles, machinery and equipment</li><li>• Noxious material</li><li>• Pest control</li><li>• Power of enforced sale of property</li><li>• Private sector housing</li><li>• Regulation of caravan sites</li><li>• Requisition for Information</li><li>• Ruinous &amp; dilapidated buildings</li><li>• Seizure and forfeiture of noise equipment</li><li>• Statutory nuisances (noise, animals, premises, dust, fumes, odour etc)</li></ul>

<b>Food and Health &amp; Safety</b>	<ul style="list-style-type: none"> <li>• Accident investigation</li> <li>• Food hygiene inspections</li> <li>• Food hygiene sampling</li> <li>• Health &amp; safety (commercial premises) inspections</li> <li>• Infectious diseases investigation &amp; control</li> <li>• Safety of sports grounds</li> <li>• Smoking control</li> </ul>
<b>Licensing</b>	<ul style="list-style-type: none"> <li>• Alcohol licensing</li> <li>• Animal related licenses (pet shops, riding establishments)</li> <li>• Gambling licensing</li> <li>• Miscellaneous licensing (charities, scrap metal)</li> <li>• Petroleum &amp; explosives licensing</li> <li>• Public entertainment licensing</li> <li>• Smoking control</li> <li>• Taxi licensing</li> </ul>
<b>Trading Standards</b>	<ul style="list-style-type: none"> <li>• Age-restricted products sales</li> <li>• Animal disease control</li> <li>• Animal identification</li> <li>• Anti-social behaviour</li> <li>• Consumer credit</li> <li>• Counterfeiting</li> <li>• Doorstep crime</li> <li>• Fair trading</li> <li>• Food labelling and composition</li> <li>• Licensing of animal movements</li> <li>• Mis-described goods and services</li> <li>• Protection of animal health and welfare,</li> <li>• Safety of consumer goods</li> <li>• Waste food</li> <li>• Weights &amp; measures</li> </ul>
<b>Pollution Control</b>	<ul style="list-style-type: none"> <li>• Approver for furnaces</li> <li>• Contaminated land</li> <li>• Control of hours of operation on construction sites</li> <li>• Duty of care</li> </ul>

	<ul style="list-style-type: none"> <li>• Illegal deposits of controlled waste</li> <li>• License consultations</li> <li>• Noise from vehicles, machinery &amp; equipment</li> <li>• Planning consultations</li> <li>• Regulated facilities</li> <li>• Requisition for information</li> <li>• Ruinous &amp; dilapidated buildings, drainage</li> <li>• Seizure &amp; forfeiture of noise equipment.</li> <li>• Smoke complaints</li> <li>• Statutory nuisance (noise, animals, premises, dust fumes, odour etc)</li> <li>• Waste management</li> </ul>
<b>Street Care Enforcement</b>	<ul style="list-style-type: none"> <li>• Abandoned vehicles</li> <li>• Animal control</li> <li>• Dog fouling</li> <li>• Domestic waste</li> <li>• Fly posting</li> <li>• Fly tipping</li> <li>• Graffiti</li> <li>• Littering</li> <li>• Noisy dogs</li> <li>• Straying dogs and other animals</li> <li>• Trade waste</li> </ul>
<b>Highway Maintenance</b>	<ul style="list-style-type: none"> <li>• Builders skips placed on highway without licence</li> <li>• Canopies and structures over the highway</li> <li>• Cellar access covers and grids</li> <li>• Damage to County Borough property</li> <li>• Dangerous trees affecting the highway - on land in unknown ownership</li> <li>• Deposition of building materials on highway without licence</li> <li>• Erectors of scaffolding on highway without a licence</li> <li>• Extraordinary traffic</li> <li>• General obstruction in highway - signs/ displayed merchandise/ advertising stand, trailers/vehicles/ caravans, contractors plant /sheds</li> <li>• Removal of things deposited on highway which are a danger e.g. mud, oil etc</li> <li>• Trees/hedges overhanging the highway causing obstruction</li> <li>• Water falling on flowing onto the highway</li> </ul>



<b>Highways Street Works</b>	<ul style="list-style-type: none"> <li>• Illegal vehicular crossing of footways -(only when new/replacement footway works are programmed)</li> <li>• Recharging of costs incurred cleaning up after road traffic accidents</li> <li>• Regular inspections to ensure works are undertaken to the highway authority standard</li> </ul>
<b>Highways Structures</b>	<ul style="list-style-type: none"> <li>• Dangerous building or structure</li> <li>• Dangerous building or structure emergency measures</li> <li>• Dangerous land adjoining street</li> <li>• Powers of entry of highway authority for purpose of marking etc certain structures and works.</li> <li>• Powers relating to retaining walls near streets</li> <li>• Supplementary provisions as to powers of entry for the purpose of survey</li> </ul>
<b>Land Reclamation &amp; Engineering</b>	<ul style="list-style-type: none"> <li>• Land drainage</li> <li>• Mines and quarries</li> </ul>
<b>Parks &amp; Countryside</b>	<ul style="list-style-type: none"> <li>• Dog fouling in parks</li> <li>• Enforcement of parks byelaws</li> <li>• Maintenance and upkeep of allotments</li> <li>• Obstruction to public rights of way</li> <li>• Tree preservation orders</li> <li>• Unauthorised use of public rights of way</li> </ul>
<b>Building Control</b>	<ul style="list-style-type: none"> <li>• Dangerous buildings/structures</li> </ul>
<b>Civil Parking Enforcement</b>	<ul style="list-style-type: none"> <li>• Enforcement of Council managed off-street car parks and on-street Traffic Regulation Orders.</li> </ul>
<b>Enforcement Section</b>	<ul style="list-style-type: none"> <li>• Regulating breaches of the Town and Country Planning Act 1990</li> </ul>
<b>Cleansing</b>	<ul style="list-style-type: none"> <li>• Fly tipping (illegal disposal of wastes)</li> <li>• Offence of dropping litter</li> </ul>

**Enforcement Activity: Community and Children's Services Group**

**Community Care**

<b>Service Area</b>	<b>Nature of Enforcement Activity</b>	
<b>Community Care</b>	<ul style="list-style-type: none"> <li>• Mental Health Act assessments</li> <li>• Protection of property</li> <li>• Vulnerable adults</li> </ul>	
<b>Community Housing</b>	<ul style="list-style-type: none"> <li>• Homeless</li> <li>• Housing advice centre</li> <li>• Protection from eviction/harassment</li> </ul>	
<b>Children's Services</b>	<ul style="list-style-type: none"> <li>• Care proceedings</li> <li>• Supervision orders</li> <li>• Care orders</li> <li>• Secure accommodation orders</li> <li>• Inherent jurisdiction orders</li> <li>• Child assessment orders</li> <li>• Emergency protection orders</li> <li>• Permission to refuse contact</li> </ul>	
<b>Library Service</b>	<ul style="list-style-type: none"> <li>• Ban from library premises for anti-social behaviour</li> <li>• Suspension of borrowing rights for non return of library materials or non-payment of fines</li> </ul>	

**Enforcement Activity: Education and Inclusion Group**

**Planning & Performance Management and Children's Services**

<b>Services Area</b>	<b>Nature of Enforcement Activity</b>	
<b>Planning and Performance Management</b>	<ul style="list-style-type: none"> <li>• Prosecution of trespassers</li> </ul>	
<b>Education</b>	<ul style="list-style-type: none"> <li>• Prosecution of parents for non-school attendance</li> <li>• Licensing of children to carry out work or perform</li> </ul>	

<b>Enforcement Activity: Corporate &amp; Frontline Services Group</b>		
<b>Finance Division</b>		
<b>Service Area</b>	<b>Nature of Enforcement Activity</b>	
<b>Council Tax</b>	<p>Applications for liability orders at magistrates court: –            Enforcement remedies that follow are: -</p> <ul style="list-style-type: none"> <li>• Attachment of earnings/benefits/ Members’ allowances</li> <li>• Charging order</li> <li>• Committal</li> <li>• Taking control of goods</li> <li>• Bankruptcy</li> <li>• Request for financial information</li> </ul>	
<b>Business Rates</b>	<p>Applications for liability orders at magistrates court: –            Enforcement remedies that follow are: -</p> <ul style="list-style-type: none"> <li>• Committal</li> <li>• Taking control of goods</li> <li>• Bankruptcy/ winding up</li> </ul>	
<b>Enforcement of unpaid Sundry Debts</b>	<p>Action available through the county court only -</p> <ul style="list-style-type: none"> <li>• Attachment of earnings</li> <li>• Committal warrants.</li> <li>• Warrants of distraint</li> </ul>	
<b>Collection of overpaid Housing Benefit</b>	<ul style="list-style-type: none"> <li>• Attachment of earnings</li> <li>• Attachment to state benefit</li> <li>• Charging order</li> <li>• Direct Earnings Attachment Orders</li> </ul>	
<b>Investigation of fraudulent claims for housing and council tax benefits</b>	<ul style="list-style-type: none"> <li>• Imposition of sanctions as set out in Social Security legislation including formal caution, administrative penalty and criminal prosecution. Sanctions are applied according to the Operational Finance Prosecution &amp; Sanctions Policy</li> </ul>	

<b>Investigation of awards, discounts (including council tax reduction) and grants</b>	<ul style="list-style-type: none"> <li>• In conjunction, consultation with Internal Audit, any other fraudulent applications made within the Council for awards, discounts, grants, exemptions etc will be investigated, resulting in either repayment, prosecution, civil penalty or simple caution.</li> </ul>	
<b>Community Estates, Finance &amp; IT</b>		
<b>Service Area</b>	<b>Nature of Enforcement Activity</b>	
<b>Tenancy Conditions</b>	<ul style="list-style-type: none"> <li>• Neighbour nuisance/anti social behaviour</li> <li>• Recharges for damage to property/land not attributed to fair wear and tear</li> <li>• Rent arrears and former tenant arrears</li> </ul>	
<b>Estate Management</b>	<ul style="list-style-type: none"> <li>• Abandoned vehicles</li> <li>• Adverse Possession</li> <li>• Breach of lease terms</li> <li>• Encroachment</li> <li>• Fly tipping</li> <li>• Parking on verges</li> <li>• Repossession of shop</li> <li>• Rent arrears</li> <li>• Trespass</li> <li>• Untidy gardens</li> </ul>	