

MONMOUTHSHIRE COUNTY COUNCIL

CORPORATE ENFORCEMENT POLICY

1.0 Introduction

1.1 Monmouthshire County Council (MCC) has statutory responsibilities for a wide range of enforcement functions affecting the environment, the public and the business community. These responsibilities are met in a range of ways - all aimed at promoting compliance with the law and promotion of the Authority's corporate aims.

1.2 The aims of this policy are to:

- Set out, for public information, the Authority's general approach to meeting its enforcement/regulatory responsibilities;
- Help deliver consistent, fair and equitable enforcement
- Provide the guiding principles that underpin the development of more specific enforcement policies
- Set out the criteria that will be used by the authority and its officers in deciding what action is appropriate when identifying any failure to comply with law.

2.0 Authorisation of officers

2.1 Day to day enforcement activities and enforcement decisions are undertaken on behalf of the authority by officers who are authorised in writing for those purposes. This authority should be shown at all times unless to do so would compromise enforcement activity. Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient training and understanding of enforcement procedures and policies to ensure a consistent approach to their duties.

2.2 Officers are bestowed with a range of legal powers through delegation from the Council and/or directly by legislation as an officer appointed by the authority for those purposes. Each regulatory service will have a procedure in place that documents how its officers are authorised.

3.0 General approach

3.1 The effectiveness of legislation depends on the compliance of those regulated. We recognise that most people and most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations and carry out our duties in a fair, equitable and consistent manner

3.2 Our first aim is to assist individuals and businesses by advising them on the law and helping them identify their options for meeting their responsibilities under it. Nevertheless, we will take firm action, including prosecution where appropriate, against those who flout the

law or act irresponsibly. The basis on which we will take formal enforcement action is set down later in this policy document.

- 3.3 Enforcement methods include investigation, inspection, assessment or other enquiry. In line with good enforcement practice, these will generally be unannounced, but will be carried out in the spirit of openness where possible. Unless the purpose of the visit could be compromised by doing so, we will seek to undertake any visits, advice or enforcement activity during normal business/trading hours, however it is recognised that it may be necessary to operate outside normal business/trading hours as the need arises.
- 3.4 We will provide information and advice in as plain a language as possible. It will be made clear whether the advice given is necessary to comply with the law or exceeds the minimum legal requirements / is based on good practice. We will provide a contact point and telephone number for further dealings with us and we will encourage businesses and others to seek advice or information from us. All requests for service will be dealt with in accordance with the MCC customer care standards.
- 3.5 We support and will promote arrangements for liaison with other authorities and enforcement bodies. If there is a shared enforcement role with other agencies, whenever possible our enforcement activities will be co-ordinated with these agencies in order to minimise unnecessary overlaps, time delays and to increase our overall effectiveness, if necessary we will agree to the most appropriate agency taking the overall lead.
- 3.6 We will minimise the costs of compliance 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 those subject to regulation when considering action.

4.0 Legal and Policy context

- 4.1 MCC will carry out its enforcement-related work with due regard to the Enforcement Concordat. This Concordat arises from a central government initiative and was adopted by the Council in October 1998. The Concordat lays out the principles of good enforcement. These are:
 - publishing clear standards, setting out the level of service and performance that the public and businesses can expect to receive
 - dealing with the public and businesses in an open and honest way
 - providing a courteous, efficient and helpful service
 - responding promptly and positively to complaints about the service
 - ensuring that enforcement action is proportionate to the risks to the public, carrying out duties in a fair, equitable and consistent manner.

4.2 In developing this enforcement policy and when setting service-specific enforcement requirements, MCC has had regard to the statutory Regulators' Compliance Code, insofar as it applies to Wales.

5.0 Taking Enforcement Decisions

5.1 Decisions on enforcement action will be taken on a case by case basis, by officers, in accordance with their schedule of authorisations / delegated powers. However to ensure consistency of approach, such decisions will be guided by this policy and any other more specific policies which may be applicable in that particular area of enforcement.

5.2 Factors that will be taken into consideration include, but are not limited to:

- the risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals
- evidence that suggests that there was pre-meditation in the commission of an offence
- the alleged offence involved a failure to comply in full or in part with the requirements of a statutory notice or order
- there is a history of previous warnings or the commission of similar offences
- aggravated circumstances such as obstruction of an officer or aggressive behaviour towards the public
- the offence, although not serious itself, is widespread in the area where it is committed
- death was a result of a breach of legislation
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm
- the general record and approach of the offender
- there has been reckless disregard of legislative requirements
- there has been a repetition of a breach that was subject to a formal caution
- false information has been supplied willfully, or there has been an intent to deceive

5.3 Formal action to be taken in the event of non-compliance may include prosecution, issue of a simple caution, service of a fixed penalty notice, statutory notice, prohibition, court order, suspension, refusal or variation of a licence or other permission, written instruction or written warning. Each case is unique and any action will be relevant and proportionate to the known circumstances. Prosecutions will be taken only if it is in the public interest to do so and where there is a realistic prospect of conviction. Any decision to prosecute will be taken in accordance with the Code for Crown Prosecutors.

5.4 Further guidance may be set out in policies or procedures relating to MCC's approach regarding specific areas of enforcement activity. The

Corporate aims and values of MCC will also be considered, where relevant, together with any local influencing factors.

5.5 Enforcement decisions will be made with due regard to the provisions of:

- The Human Rights Act
- The Crime and Disorder Act
- The Police and Criminal Evidence Act
- The Criminal Procedure and Investigation Act
- The Regulation of Investigatory Powers Act
- Equal rights and anti-discrimination legislation
- Service-specific legislation
- All other relevant legislation applicable from time to time

5.6 If we become aware of an enforcement issue that would be of legitimate interest to, or more properly dealt with, by another enforcement agency, we will ensure that the information is passed to that agency. Any such action will only be undertaken in the public interest and in compliance with the Data Protection Act 1998. In the event that there is a shared enforcement role all parties will agree who will lead and how any action taken will be cooperatively managed.

6.0 Taking enforcement action

6.1 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, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

6.2 Where immediate action is considered necessary, an explanation of why such action is required will be given at the time and confirmed in writing.

6.3 During an investigation officers may use their statutory powers, which will be explained, and which may include taking samples and items for testing, inspecting records and seizing or detaining goods and documents.

6.4 At the conclusion of any investigation a decision will be reached as to whether the facts disclose an offence and if so whether the matter will be dealt with either informally or formally. Any formal course of action will be in accordance with MCC's prosecution procedure using the documents and decision making processes set out.

Informal Action – Advice or Warning

6.5 Minor incidents are normally dealt with by means of informal action and would involve the officer drawing the matter to the attention of the

individual or to the owner of the business or to an appropriate employee and giving advice where necessary. A report may be left at the time of the visit or contained within a written letter of advice or warning. Rarely will a minor or technical infringement result in more formal action being taken, particularly if it is capable of immediate rectification. A follow-up visit may be made, where circumstances demand, to ensure minor matters have been rectified. However, if previous advice has been repeatedly ignored, an officer may choose to treat the incident in a formal way.

Formal Action – Statutory Notice

- 6.6 Depending on the powers of the officer under the applicable legislation, the officer may issue a statutory notice requiring that certain actions be carried out within a given timescale. Any such notice served will contain details of how and where to appeal against the requirements of the notice.
- 6.7 The powers of individual officers are set out in the authority's scheme of delegation and subsequent authorisations.

Formal Action – Fixed Penalty Notices (FPN), Penalty Notices for Disorder (PND), Administrative Penalties and Benefits Cautions

- 6.8 In certain circumstances legislation gives officers the power to issue cautions and penalties such as FPNs or PNDs as a means of disposing of offences. Such decisions are made at the discretion of officers in accordance with their authorisations / delegated powers and in line with any relevant policies or standard operating procedures.

Formal Action - Reporting

- 6.9 Where appropriate suspected offenders will be given the opportunity to provide an explanation of the circumstances surrounding the commission of any alleged offence. This explanation may be given in writing or during an interview conducted under the rules of the Police and Criminal Evidence Act 1984 (PACE) and written down or recorded as appropriate. Suspected offenders will be invited to seek legal advice prior to these interviews taking place and to be accompanied by a representative at the interview itself.
- 6.10 Senior officers will consider all infringement reports and decide what course of action to take in line with this enforcement policy and the Code for Crown Prosecutors, which involves a two-stage decision making process:
- Firstly, an evidential test to ensure that there is enough evidence to provide a 'realistic prospect of conviction'. If this is lacking, then no formal action will be taken.
 - Secondly, a public interest test, which will determine whether it is in the public interest for a prosecution to be taken.

- 6.11 A prosecution is more likely to be pursued if the alleged infringement is shown to have:
- Been fraudulent, or involved deliberate or persistent breach of legal obligation (e.g. disregarding warnings and/or formal notices) in circumstances which caused, or were likely to cause, material loss or prejudice to others, or
 - Caused, or was likely to cause, loss, harm or prejudice through negligence or gross carelessness, or
 - Endangered the health, safety or well-being of people, animals or the environment, or
 - Involved obstruction of an authorised officer carrying out his/her duties.
- 6.12 Officers will also consider:
- Any explanation offered by the suspected offender or on behalf of the suspected company
 - The previous history of the company or person(s) concerned
 - Their willingness to take action to prevent a recurrence of the problem
 - The likelihood of a defendant being able to establish a due diligence or other statutory defence
 - Whether any other enforcement action is more appropriate.

Formal Actions following Report

- 6.13 The eventual course of action taken may include the following: -
- No action (usually for lack of evidence but extenuating circumstances may apply, such as serious illness or incapacity of the defendant)
 - Issue a written warning
 - Offer a simple caution
 - Proceed with a prosecution
- 6.14 However, there are other options for formal action that are available to certain regulatory services under the legislation that they enforce. These will be detailed in the enforcement policies and service standards produced by those particular services.

Simple Caution

- 6.15 In appropriate circumstances, where a prosecution would otherwise be justified, a simple caution may be issued with the agreement of the defendant. This will be done in accordance with Home Office guidelines. The purpose of these cautions is to avoid unnecessary court action, but can only be used where the defendant fully admits the offence and agrees to it being recorded and cited in court should a future infringement occur. No court proceedings are involved. The following conditions must be met before a simple caution is offered:
- There must be evidence of the offender's guilt sufficient to justify prosecution
 - The offender must admit the offence

- The offender must understand the significance of the formal caution and give informed consent to being cautioned
- 6.16 If a simple caution is declined, a prosecution is almost certain to be brought.

7.0 Complaints about our Service

- 7.1 We would invite any person or business having a complaint about a regulatory service provided by the Council to contact the manager of the service concerned. Should the matter not be resolved MCC has an internal complaints procedure available to all. The formal Council complaint form and procedure is freely available and can be found on the Council website at www.monmouthshire.gov.uk, by asking at any Council office, by writing to the relevant Council department or by calling the Council on 01633 644644.

8.0 Monitoring and Review

- 8.1 This policy will be reviewed regularly by service managers.
- 8.2 Comments on this policy are welcomed and should be addressed to The Chief Executive at County Hall, Cwmbran, telephone 01633 644644.