



**Planning and Public Protection Service**

# **ENFORCEMENT PROTOCOL AND ASSOCIATED POLICY**

June 2009 - version 01

## **Enforcement Policy:**

**Planning and Public Protection Service will deal with all related enforcement matters in a firm but fair manner and will seek to enforce relevant legislation to protect individuals and the wider interests of the Community.**

**In exercising our enforcement and regulatory duties we will adhere to the following principles:**

- **Fair and consistent**
- **Open and transparent**
- **Helpful**
- **Proportionate**

# Language Signpost

If you need further information, please ask someone you know who speaks English or Welsh to telephone 01824 706146.

اگر آپ کو مزید معلومات درکار ہوں تو برائے مہربانی انگریزی یا ویلش زبان جاننے والے اپنے کسی واقف کار سے کہیں کہ وہ آپ کی جانب سے فون نمبر 01824 706146 سے رابطہ کریں۔

আপনার যদি আরো তথ্যের প্রয়োজন হয়, তাহলে আপনার জানা ইংরেজী অথবা ওয়েলশ ভাষা বলতে পারেন এমন কাউকে অনুগ্রহ করে 01824 706146 নম্বরে টেলিফোন করতে বলুন

如果你需要更多信息，请让一位你认识的且会说英文或威尔士语的人电话联络 01824 706146

Kung kailangan ninyo ng karagdagang pabatid, magtanong po lamang kayo sa sino mang marunong mag-salita ng English o kaya ng Welsh sa pamamagitan ng telepono 01824 706146

ถ้าท่านต้องการรายละเอียดเพิ่มเติม โปรดถามผู้ที่ท่านรู้จักที่พูดภาษาอังกฤษหรือภาษาเวลช์ได้ เพื่อโทรศัพท์หมายเลข 01824 706146

Denbighshire County Council website:  
[www.sirddinbych.gov.uk](http://www.sirddinbych.gov.uk) or [www.denbighshire.gov.uk](http://www.denbighshire.gov.uk)

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## **1 INTRODUCTION**

The Enforcement Protocol and Associated Policy apply to all regulatory functions within the Service:

- Animal health and welfare
- Building control
- Community safety
- Development control & compliance
- Food hygiene safety
- Health and safety at work
- Licensing
- Pollution control
- Private sector housing (including HMOs)
- Public health
- Trading standards

1.2 Further information on the roles and responsibilities of these functions can be found in a booklet produced by the Service, which has been produced to advise and guide the public on the various functions of the service.

1.3 These functions enforce a wide range of legislation that aims to protect the interests, rights and welfare of businesses and individuals in relation to the environment that they use.

1.4 The purpose of the Enforcement Policy and Associated Protocol is to set out what businesses and individuals can expect from us when enforcing the law. At the same time, the protocol and associated policy commits our enforcement officers to carrying out enforcement activities in a fair and consistent manner, being open and transparent, helpful and proportional.

## **2. INVESTIGATING BREACHES AND ENFORCING THE LAW**

2.1 The Planning and Public Protection Service aims to achieve and maintain consistent and effective investigations into alleged contraventions of legislation and will take appropriate action, having regard to the nature and severity of any non compliance and the effect it may have on individuals of the public, consumers and businesses.

2.2 Consideration will be given to codes of practice and guidance notes issued by government and relevant professional bodies.

2.3 It does not necessarily follow that all alleged contraventions with legislation will be investigated or that all contraventions will be enforced as each case will be assessed on its merits having regard to a number of factors including:

- The resources at the disposal of the Service
- The level of harm or potential harm caused to interests or acknowledged importance i.e. what is the severity?
- Vexatious complaints
- Whether the breach or alleged breach is the responsibility of the Service

2.4 If the breach or alleged breach is not the responsibility of the Council to investigate we will pass it on to the appropriate investigating authority.

### **3. THE PRINCIPLES OF THE ENFORCEMENT POLICY**

3.1 Having regard to the Enforcement Policy the Service will strive to adhere to the following principles.

#### **Fair and Consistent**

3.2 Duties will be carried out in a fair, equitable and non-discriminatory manner to ensure that decisions are not influenced regardless of gender, age, ethnic origin, religious or political beliefs or sexual preferences of the offender, victim or witnesses.

3.3 At all times we will ensure a fair and even handed approach; this does not mean however uniformity as there are always a number of different factors that will weigh on deciding any course of action.

#### **Open and transparent**

3.4 To ensure that investigations and any subsequent enforcement action is understood by all relevant parties, including individuals, organisation or business to which the legislation applies, as well as any complainants or interested third parties.

3.5 All parties will be kept informed of progress regarding any investigations and any subsequent actions as is considered practically reasonable.

3.6 We will consider requests for information, subject to the Data Protection principles and the Freedom of Information Act.

#### **Helpful**

3.7 We recognise that most businesses and individuals want to comply with the law. Our role involves actively working with residents, consumers and businesses to advice and assist with compliance.

3.8 We will provide a courteous, helpful and efficient service and when appropriate we will provide our stakeholders with a contact point and telephone number for further dealings with us in the future.

- 3.9 Cases requiring expertise from more than one agency or council function will, where practicable, be dealt with on a co-ordinated, multi-agency or multi-departmental basis.
- 3.10 Where appropriate we will attempt to resolve any breaches amicably and through negotiation, although there will be occasions where direct enforcement action is necessary.

### **Proportional**

- 3.11 To ensure that any action taken reflects the actual, or potential, risk to health, safety, the environment or economic disadvantage to the public, consumer or businesses.
- 3.12 We will therefore not take action just because there is a breach; we will take the most appropriate action to address any impact on interests of acknowledged importance.

## **4. AUTHORISATION OF OFFICERS**

- 4.1 Only officers who are suitably trained, qualified or have relevant experience will be authorised to carry out investigation and take enforcement action.
- 4.2 Individual officers' authorisations are reviewed on a regular basis.
- 4.3 Officers are required to show their authorisations on demand.

## **5. INSPECTIONS**

- 5.1 The Service will carry out pre-programmed inspections of businesses, follow up inspections of businesses and we will also be required to inspect premises as a result of complaints alleging a potential contravention.

### **Pre-programmed inspections**

- 5.2 Many businesses are visited by officers as a result of a pre-programmed routine inspection based on a risk assessment. The purpose of the inspection is to ensure businesses are complying with relevant legislation and guidance.

### **Complaints led inspections**

- 5.3 When complaints are received, alleging a potential contravention, officers, in most circumstances, will be duty bound to inspect the relevant premises to establish whether there is in fact any contravention.

## **Follow up inspections**

- 5.4 As a result of the above two type of inspections officers will, on occasions, need to carry out follow up inspections to ensure compliance.

## **Rights of Entry**

- 5.5 Appropriate authorised Officers do have rights of entry to inspect premises for enforcement related purposes.

## **6. EVIDENCE GATHERING**

- 6.1 Enforcement Officers have a wide variety of duties and powers to help them investigate potential contraventions.
- 6.2 When the legislation allows, an officer may enter premises, take photographs, remove articles, take samples or require information and may in some instances be accompanied by other persons.
- 6.3 If individuals or companies obstruct officers or do not provide the requested information, the Council will take relevant legal action.
- 6.4 Where appropriate Officers may caution any individual in order to take formal statements to assist in any investigation and / or subsequent enforcement action, including prosecutions.

## **7. NO CONTRAVENTION**

- 7.1 As a result of any inspection if no contravention is found it will be common practice to put the findings of the investigation in writing to the relevant individual / business and to any complainant.

## **8. COMPLIANCE**

- 8.1 Where an investigation has established a contravention some form of action will be considered dependent upon the seriousness of the contravention.
- 8.2 Under normal circumstances compliance should be achieved through negotiation or informal action such as letters or giving advice.
- 8.3 In the event of non compliance the following enforcement options are available:
- giving verbal advice on the law and the means to ensure compliance
  - consideration of reasonable timescales to achieve compliance

- service of advisory and warning letters

8.4 We will also ensure that individuals understand what is required of them and if necessary translate correspondence or notice into a language or format of their preference.

8.5 Where this does not result in compliance a decision will need to be taken as to whether to take no further action or to instigate formal enforcement action, such as:

- informal and formal cautions
- issue a fixed penalty notice
- issue a statutory notice, i.e. a prohibition / improvement notice
- prosecute
- carry out work in default
- refusal or revocation of licence / approval / authorisation
- seek injunction
- seizure of documents or goods
- closure of premises

It may be that one or more of these outcomes are appropriate in any given case.

8.5 On occasions where a contravention justifies such action enforcement proceedings may be instigated immediately after the initial investigation.

8.6 Some of the factors to be considered in coming to a decision may include:

- The seriousness of the offence
- The impact of the contravention on the public interest
- The past history of the offender
- The confidence of officers that the contravener will address the contravention

8.7 In the public interest, matters concerning non-compliance will be shared, where appropriate, with other enforcement agencies. Where this takes place, due regard will be paid to the provisions of the Data Protection Act.

## **9. PROSECUTION**

9.1 The decision to prosecute is a significant one and is not taken lightly. Prosecution will in general will be confined to those persons who deliberately and blatantly disregard the law, refuse to achieve even the basic minimum legal requirements (often following previous contact with the authority) or who put the public at serious risk. Fortunately, such circumstances are in the minority.

9.2 Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors.

9.3 The principles laid down by the Crown Prosecution Service Code of Practice require two tests to govern the decision making process:

#### **9.3.1 The Evidential Test**

The Prosecutor shall be satisfied that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge.

#### **9.3.2 The Public Interest Test**

Essentially, once the evidential test has been passed the prosecution will usually proceed unless there are public interest factors against prosecution that clearly outweigh those in favour. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.

9.4 The Council will take all reasonable steps to recover its costs of having to take prosecution proceedings.

## **10. COMPLAINTS RELATING TO THE WAY WE HAVE DEALT WITH YOU**

10.1 Should you have a complaint about the way we have provided a service, then you can make a complaint to the Head of Planning & Public Protection, at the address given at the end of this document. Alternatively, you could contact the Council's Complaints Officer on 01824 706169. Every complaint will be investigated and responded to in accordance to the Council's Complaints Policy. The Council's Complaints Policy can be viewed on the website: [www.denbighshire.gov.uk](http://www.denbighshire.gov.uk).

## **11. STATUS OF THE PROTOCOL AND POLICY**

11.1 This Protocol and Policy was approved by Lead Member for Communities on 16 June 2009.

11.2 In addition to this Protocol, individual sections of the service will have other more detailed procedures / standards relating to enforcement activities in their specific area of work.

11.3 This Protocol and Policy will be reviewed annually or when there is any significant change in legislation or other circumstances which affect its effectiveness and validity.

## 12. RELATED DOCUMENTS AND GUIDANCE




The Service will have regard to a wide range of documents in implementing its enforcement responsibilities including: -

- Enforcement Concordat
- Police and Criminal Evidence Act (PACE)
- Regulation of Investigatory Powers Act (RIPA)
- Code for Crown Prosecutions
- Human Rights Act
- Crime & Disorder Act
- Regulators' Compliance Code
- Regulatory Enforcement and Sanctions Act

## 13. CONTACTS

- 13.1 This Protocol and Associated Policy is available in Welsh. Copies can also be made available in any other language, on request. Please refer to the contact detail below.
- 13.2 For a Braille, large-print, tape or CD version of this Protocol and Associated Policy, call free on 0800 243980.

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