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ENVIRONMENT DIRECTORATE

ENVIRONMENTAL SERVICES

POLICY IN RELATION TO THE ENFORCEMENT OF ENVIRONMENTAL CRIME

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Environmental Services

Environmental Crime Enforcement Policy

Contents

	Page
Introduction	3
Approval	3
Scope	3
Access	4
General Principles	4
Complaints / Service Requests	4
Deciding the action to take	5
Liaison	11
Offences	11
Accepting Guilty Pleas	11
Considering the views of those affected by the offences	12
Re-starting a prosecution	12
Code for Crown Prosecutors	13
Enforcement Policy implementation	13
The Role of the County's Legal Services	13
Complaints/Grievances against an Officer	13
Regulation of Investigatory Powers Act 2000	14

1. Introduction

- 1.1 Environmental Services will apply this policy so that it can make fair and consistent decisions about enforcement actions in relation to the investigation of offences of fly tipping, breaches of the regulations in respect of trade waste and the abandonment of vehicles on private and public land within the County .Fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of Denbighshire. Even in a small case, a decision about enforcement action has serious implications for all involved; the general public, businesses, victims, witnesses and defendants
- 1.2 The Policy is also designed to make sure that everyone knows the principles that the Environmental Crime Officers within Environmental Services will apply when carrying out investigation and enforcement activities. By applying consistent principles, everyone involved in the process is helping to treat stakeholders in a fair and effective manner.

2. Approval

- 2.1 This policy was before the County Council Environment Scrutiny Committee on 14th October 2010 and was approved. It will be re-evaluated every 2 years.

3. Scope

- 3.1 This policy applies to the enforcement activities under the legislation enforced by Environmental Crime Officers within Environmental Services.
- 3.2 Enforcement in the context of this policy includes formal or informal action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, but includes, for example, the inspection of premises for the purpose of checking compliance with acts and regulations, and the provision of suitable advice to aid compliance.

4. Access to the Policy

- 4.1 This policy is available on the Council's web site and in hardcopy at Kinmel Park Depot, Bodelwyddan, Denbighshire, LL18 5UX. It can be ordered by telephoning 01824 706100 (Cymraeg) or 01824 706101 (English), or writing to the Environmental Services Environmental Crime Department, Kinmel Park Depot, Bodelwyddan, Denbighshire, LL18 5UX.
- 4.2 On request, this policy will be made available on audio tape, in Braille, large type, or in other languages.

5. General Principles

- 5.1 Each case is unique and must be considered on its own merits. There are however, general principles that apply in the way each case must be approached. These are laid out in this policy and in the Enforcement Concordat to which the Authority has signed up.
- 5.2 Environmental Crime Officers action must be fair, independent and objective. They must not let any personal views about issues such as ethnic or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source.
- 5.3 The Environmental Services Environmental Crime Department is a public authority for the purposes of the Human Rights Act 1998. Officers must apply the principles of the European Convention on Human Rights in accordance with the Act.

6. Complaints

- 6.1 Complaints which may result in enforcement action against a business or individual will be notified to that business or individual as soon as is practicable, except in the circumstances described in 6.2 below. During the progression of enforcement action that business or individual will be further notified of progress, potential action and any new information.
- 6.2 In circumstances where notification could impede enforcement action, notification will not take place until those circumstances no longer exist.
- 6.3 We will comply with the principles of the Freedom of Information Act, the Environmental Information Regulations and the Data Protection Act to protect the identification of complainant's details.

7. Deciding the action to take

- 7.1 There are two issues to determine. The first is what level of enforcement action to take. The second is that, if the first decision is to take formal enforcement action, then, is that action viable and appropriate. There are two stages in determining whether formal enforcement action is viable and appropriate:

- **Stage 1: the evidential test,**
- **Stage 2: the public interest test.**

There are two stages in the decision to take formal enforcement action.

The first stage is the **evidential test**. If the case does not pass the evidential test, proceedings will not be instituted, no matter how important or serious it may be. Further investigation may be necessary and Officers may be instructed to carry out further enquiries.

The second stage is to decide whether the proposed action is in the **public interest**.

Environmental Services will only start, and continue with formal enforcement action when the case has passed both tests. The following paragraphs, detail how this policy applies to the consideration of taking a prosecution:

‘Environmental Crime Officers will, when required consult the Legal Services Department to determine that there is enough evidence to provide a ‘realistic prospect of conviction’ against any defendant on each charge. If consultation is not required Environmental Crime Officers will instigate formal enforcement proceedings and draw together the necessary legal documentation for submission to the Legal Services Department, this legal documentation is referred to as the case file. All case files will be vetted and ‘counter signed’ by the Environmental Crime Manager or Senior Waste Officer (Operations) within Environmental Services’.

‘A realistic prospect of conviction is an objective test, it means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply’.

When deciding whether there is enough evidence to prosecute, Environmental Crime Officers must consider whether the evidence can be used and whether it is reliable. Public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

Environmental Crime Officers, Environmental Services Managers and the Legal Services Department must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors

may increase the need to prosecute but others may suggest that another course of action would be more appropriate.

The following lists some of the common public interest factors, both for and against prosecution. The list is not exhaustive. The factors that apply will depend on the facts in each case.

Some common public interest factors in favour of prosecution.

The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- *a conviction is likely to result in a significant sentence;*
- *the evidence shows that the defendant was a ringleader or an organiser of the offence;*
- *there is evidence that the offence was premeditated;*
- *the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal, damage or disturbance;*
- *the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;*
- *the defendant's previous convictions or cautions are relevant to the present offence;*
- *there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.*

Some common public interest factors against prosecution

A prosecution is less likely to be needed if:

- *the court is likely to impose a nominal penalty;*

- *the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;*
- *the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);*
- *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;*
- *there has been a long delay between the offence taking place and the date of the trial, unless:*
 - the offence is serious;*
 - the delay has been caused in part by the defendant;*
 - the offence has only recently come to light; or*
 - the complexity of the offence has meant that there has been a long investigation;*
- *a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;*
- *the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.*

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Officers in conjunction with the legal team must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

7.2 What level of enforcement action to carry out.

This can be one, or a number, of the following.

- Prosecution / (FPN) Fixed Penalty Notice (if appropriate or applicable)
- Formal Caution
- Written warning and advice
- Verbal warning and advice

- Revisit of premises
- No action

Prosecution:

In order to take forward a prosecution, Environmental Crime Officers must be satisfied that a crime has been committed and that there is sufficient evidence available in order to afford a reasonable prospect of conviction at a court. Such offences may be discharged by way of Fixed Penalty Notice (FPN) if appropriate and or applicable, should the offence be admitted.

Formal Caution:

A record of the Caution will be kept on file for 2 years. Where appropriate, a formal caution may be sent to the relevant Police Constabulary and or The Environment Agency (Wales). If the offender commits a further like offence, the formal caution may influence the decision to take a prosecution. If during the time the caution is in force the offender pleads guilty to, or is found guilty of, committing another like offence anywhere in England and Wales, the caution may be cited in court. If an offender accepts a formal caution, agreement will be reached concerning the repayment of cost incurred when disposing of offending items by Denbighshire County Council.

Should a person refuse to accept a formal caution then the Authority will institute proceedings and the court will be advised that the defendant would not accept the formal caution procedure.

Written Warning:

For some contraventions offenders may be sent a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must

also take into account the health, safety and nuisance implications of the contravention.

Verbal Warning / Words of Advice:

For minor breaches of the law, verbal advice will be given clearly identifying the contraventions, and giving information on how to put them right and including a deadline by which this must be done. Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

Revisit:

Following a formal notice; written warning and advice; or verbal warning and advice, officers may revisit the premises to check compliance has been achieved. For very minor contraventions we may advise that a revisit may be carried out after the agreed deadline. Officers will then decide whether to actually make a revisit depending upon the health, safety, environmental damage or nuisance implications of the contravention, and the perceived likely responding action of the offender to the verbal advice.

No Further Action:

In exceptional circumstances, contraventions may not warrant any further action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Authority outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their well being.

8. Liaison

8.1 Regular meetings between Environmental Services Managers and Environmental Crime Officers will take place. The purpose of these meeting is to allow Officers the opportunity to detail investigations which they are undertaking / planning to undertake.

8.2 Where an enforcement matter affects other County Departments the Head of Environmental Services will be informed and information will be passed to the Head of the relevant Department as soon as possible

8.3 Where an enforcement matter affects a wide geographical area beyond the County's boundaries, or involves enforcement by one or more other local authorities or organisations; all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

9. Offences

9.1 The Head of Environmental Services, Environmental Services Managers or Environmental Crime Officers may take advice from the Authorities Legal Services Department in order to provide greater clarification of any offences committed.

10. Accepting Guilty Pleas

10.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious charge because they are admitting only part of the offence. Environmental Services Managers will only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending. Environmental Services Manager will not accept a guilty plea because it is convenient.

10.2 In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

11. Considering the views of those affected by offences

11.1 The Environmental Services Environmental Crime Department undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test (see section 7 above) the consequences for those affected by the offence, of the decision whether or not, and how to take enforcement action, and any views expressed by those affected will be taken into account.

11.2 Those people affected by the offence will be told about any decision that makes a significant difference to the case in which they are involved.

12. Re-starting a prosecution

12.1 People should be able to rely on enforcement decisions taken by Environmental Crime Officers. Normally, if a suspect or defendant is advised that there will not be a prosecution, or that the enforcement action has been stopped, that is the end of the matter and the case will not start again. Occasionally there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:

- *in cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand,*
- *cases which are stopped so that more evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the defendant will be told that the enforcement action may well start again,*

- *cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.*

The decision to restart an investigation / prosecution will be taken by Environmental Services Managers in conjunction with the Legal Services Department.

13. Code for Crown Prosecutors

13.1 This policy takes account of all the relevant parts of the Code for Crown Prosecutors.

14. Enforcement Policy implementation

14.1 Internal audits will be undertaken periodically to ensure that all enforcement activity is carried out in accordance with this policy. These audits will be carried out by the Environmental Crime Team Manager who will report his findings to the Senior Waste Officer (Operations).

14.2 Records of the audits will be kept by the Environmental Crime Team Manager for inspection.

15. The Role of the County's Legal Services

15.1 Environmental Services Managers may send copies of reports to the Legal Services Department for guidance and advice.

16. Complaints / Grievances against an Officer

16.1 Should any person wish to complain about the conduct of any Officer then they should contact the Corporate Complaints Officer who will investigate the matter. The address of the Corporate Complaints Officer is Customer Care Services,

Council Offices, Wynnstay Road, Ruthin, LL15 1YN or via the telephone on 01824 706169 or via email on complaints@denbighshire.gov.uk.

16.2 Alternatively the aggrieved person may contact the Head Environmental Services who will arrange for the matter to be investigated.

17. Regulation of Investigatory Powers Act 2000

17.1 The requirements of this Act are relevant to investigations undertaken by this Department. The following paragraphs deal with the authorisation procedures for using covert surveillance and using covert human intelligence sources (i.e. informants). Permission must be sought and obtained in the circumstances listed below.

Directed Surveillance is defined as covert surveillance but not intrusive and is undertaken for the purposes of a specific investigation or a specific operation. Also the surveillance is carried out in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation) and otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be practicable for an authorisation to be sought for the carrying out of the surveillance.

Intrusive Surveillance is defined as covert surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle and involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

17.2 **Covert Human Intelligence Source (CHIS)** is a person who:

Establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within (a) or (b) below

(a) the person covertly uses such a relationship to obtain information or to provide access to any information to another person; or

(b) the person covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship

17.3 Surveillance is covert if it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place.

17.4 A purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.

17.5 In the event of any officer wanting to use any form of covert surveillance permission must be sought from one of the following officers:-

Head of Planning and Public Protection Service

Assistant Head of Planning and Public Protection Service

17.6 Authorisation for any form of surveillance will be given in writing and the authorising officer will take into account the provisions of Section 28 of the Act and in particular will have regard as to whether the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.

17.7 In the event of any officer wanting to use a CHIS permission must be sought from one of the following officers:-

Head of Planning and Public Protection Service

Assistant Head of Planning and Public Protection Service

17.8 Authorisation for using a CHIS will be given in writing and the authorising officer will take into account the provisions of Section 29 of the Act and in particular will have regard as to whether the use of such a person is proportionate to what is sought to be achieved.