

# **Herefordshire Council**

## **Enforcement and Prosecution Policy**

**March 2012**

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# 1. Introduction

- 1.1 This policy sets out the general principles that Herefordshire Council will follow in relation to regulation, enforcement and prosecution. In particular it sets out what businesses, individuals and the community as a whole can expect from the council's regulatory services and its enforcement/investigation officers.
- 1.2 The policy will be complemented, where appropriate, by service area specific policy or procedure.
- 1.3 The primary function of the council's regulatory and enforcement work is to protect the public, public funds, the environment and groups such as consumers, residents and tenants, workers and businesses. At the same time, carrying out such activity in an equitable, practical and consistent manner helps to maintain a level playing field for local businesses, individuals and our other service users. Good regulation and enforcement will help to promote a thriving local economy.
- 1.4 This policy has been developed with due regard to the 'Principles of Good Enforcement' set out in the following guidance documents:
  - Central and Local Government Enforcement Concordat
  - The Regulators' Compliance Code issued under the Legislative and Regulatory Reform Act 2006
  - The Code for Crown Prosecutors issued by the Director of Public Prosecutions under the Prosecution of Offenders Act 1985.
- 1.5 In certain circumstances we may conclude that a provision contained in one or more of the above-mentioned documents is either not relevant or is outweighed by another provision or relevant factor. We will ensure that any decision to depart from policy guidelines is properly reasoned and based on material evidence.
- 1.6 For the purposes of this policy the following definitions are given to the terms 'regulatory' and 'enforcement':
  - 'Regulatory' encompasses the council's numerous powers and duties enabling the behaviour of individuals and/or organisations to be controlled in the public interest.
  - 'Enforcement' includes any action carried out in the exercise of, or against the background of, statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the giving of Statutory Notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations and conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of cautions and the making of applications to the Courts for Orders to control the conduct of individuals and/or organisations.
- 1.7 All enforcement activities, including investigation and formal actions, will always be conducted in compliance with the council's statutory obligations. Council enforcement officers should act within the scope of their delegated authority and with due regard to the provisions of the Police and Criminal Evidence Act 1984, the Criminal Procedures and Investigation Act 1996, the Human Rights Act 1998, the Data Protection Act 1998,

the Regulation of Investigatory Powers Act 2000, the Legislative and Regulatory Reform Act 2006, and any other legislation relevant to specific service areas and legislation designed to tackle discrimination and promote equality.

## **2. Principles of enforcement – Policy**

### **2.1 Supporting Economic Progress through Compliance**

The effectiveness of legislation in protecting consumers, other businesses and the community depends crucially on the compliance of those regulated. We recognise that most people and most businesses want to comply with the law. We will, wherever practicable, take care to help businesses and others meet their legal obligations without unnecessary expense.

We will strive to ensure that when information is needed from businesses that it is assessed to avoid duplication of requests and amended where necessary. We aim to seek feedback on the forms we use to collect information from business.

Whenever practicable we will promote positive incentives for businesses that comply, such as 'Scores on the Doors'.

### **2.2 Openness through Clear Accessible Advice and Guidance**

2.2.1 We will provide information and advice in plain language on the legislation that we enforce and disseminate this as widely as possible, through information leaflets, newsletters, training schemes and on the Council website at [www.herefordshire.gov.uk](http://www.herefordshire.gov.uk).

2.2.2 Within the limits imposed by law, we will be open about how we carry out our work, including any charges that we make for services. We will make a point of seeking appropriate consultation with business, voluntary organisations, charities, landlords, tenants, consumers and workforce representatives about the services that we provide and about our enforcement policies and procedures. We will discuss general issues, specific compliance failures or problems with those experiencing difficulties.

### **2.3 Helpfulness through Clear Accessible Guidance**

2.3.1 We believe that it is in the interests both of regulated businesses and the wider public to get things 'right first time', and that therefore our enforcement role should involve actively working with all those subject to regulation, especially small and medium sized businesses, to guide and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name and carry proof of their identity. We will provide a contact point and telephone number for further dealings with us and we will encourage businesses and others to seek guidance or information from us. All requests for service, including applications for approval of establishments, licences, registrations, etc, will be dealt with efficiently and promptly within the resources available. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays. This reflects our approach to delivering services in an efficient way.

### **2.4 Targeted, Proportionate and Risk-based Enforcement**

2.4.1 We will minimise the costs of compliance by ensuring that any action we require is proportionate to the risks. We will adopt a risk-assessment approach to target resources where most needed. In line with the codes referred to above, we will take account of the

circumstances of the case and the response of those subject to regulation when considering action. We will take particular care to work with small businesses and with voluntary and community organisations, to help them meet their legal obligations without unnecessary expense. At the same time we will use intelligence and direct resources to identify those who flout the law or act irresponsibly and take firm action against them, including prosecution where appropriate.

## **2.5 Consistent Enforcement**

2.5.1 We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases and to treat each case on its own merits, we will have arrangements in place to promote consistency. We support and will promote arrangements for effective liaison with other authorities and enforcement bodies through schemes such as the Home Authority principle, the Lead Authority principle and the Primary Authority principle.

## **2.6 Working with Other Enforcement Agencies**

2.6.1 Some regulatory activity involves consultation with other agencies before deciding on the most appropriate course of action. Sometimes there is more than one agency that can act in response to a problem. 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 duplication or delays and to increase our overall effectiveness. For example, joint working may be carried out with the Police, Fire Service, Health and Safety Executive, Office of Fair Trading, Environment Agency, Revenue and Customs, Gambling Commission, Animal Health and Veterinary Laboratories Agency other local authorities and government departments. Persistent offenders may also be reported, for example, to the Office of Fair Trading for further action. Equally, there are instances when more than one part of the Authority may have enforcement options in respect of the same issue. We will ensure that appropriate liaison occurs and that the 'best option' for enforcement is taken.

- Wherever we have a statutory duty to report regulatory matters to another body or agency, we will have procedures in place to ensure that this happens;
- If we become aware of an enforcement issue that would be of legitimate interest to, or more properly be dealt with by, another enforcement agency, we will ensure that the information is passed to that agency in good time.
- Occasionally an offence can be dealt with under more than statute. In these cases a decision will be made between officers as to which is the most effective course of action.

## **2.7 Adopting Good Enforcement Procedures**

2.7.1 Guidance from an officer will be put clearly and simply, explaining why any remedial work or action is considered to be necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice. Such guidance will be confirmed in writing.

## **2.8 Complaints about service**

- 2.8.1 We provide a dedicated Customer Insight Unit to help with any complaint about council services. This team can be contacted by telephone on 01432 260535 or by email at [feedback@herefordshire.gov.uk](mailto:feedback@herefordshire.gov.uk).

## **3. Principles of Enforcement - Procedures**

- 3.1 Wherever possible officers will provide an opportunity to discuss the relevant circumstances before any decision to take formal enforcement action is made. Examples of where it may not be appropriate to discuss the matter may include cases where immediate action is required in the interests of health and safety or environmental protection, or cases where it is necessary to prevent evidence being destroyed.
- 3.2 Where immediate action is considered necessary, an explanation of why such action is required will be given at the time and where reasonable confirmed in writing within 5 working days.
- 3.3 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with any enforcement notice).

## **4. Investigation**

- 4.1 The council will carry out risk assessments to ensure that our regulatory efforts are targeted where they would be most effective. Inspections and other visits will be in accordance with the risk assessment, except where visits are requested, or we are required to investigate.
- 4.2 All Officers will have regard to the principles contained in this policy when making enforcement decisions. Regard will also be had to any approved statutory, governmental or other national guidance, and to any internal quality procedures.

## **5. Enforcement options**

- 5.1 There are a variety of enforcement actions available to the council:

- compliance advice and support
- review of any licence and/or licence conditions
- written warning
- legal enforcement notice
- fixed penalty notice
- work in default/cost recovery action
- seizure/application for forfeiture
- the issue of a caution
- administrative penalty
- prosecution or other legal proceedings including injunctive action
- Proceeds of Crime Act confiscation proceedings
- Community resolution

This is not an exhaustive list and other options may be available under legislation relevant to specific areas.

- 5.2 In choosing which enforcement option(s) to take the council will aim to change the inappropriate behaviour causing the problem and to deter future non-compliance. The enforcement option(s) chosen will be proportionate to the nature of the non-compliance/alleged offence and the harm caused by it, and appropriate to the individual or business which the action is taken against. Enforcement action will be followed up as appropriate and will result in further enforcement options being pursued if the initial action has not achieved the appropriate result.
- 5.3 In some circumstances matters may be referred to another agency for enforcement action, or officers may liaise and take joint action with other council departments and/or external organisations in order to achieve enforcement aims.

## **6. Prosecution**

- 6.0.1 The Attorney General's guidelines on criteria for prosecution endorsed the principle that suspected criminal offences should not automatically be the subject of prosecution.
- 6.0.2 Herefordshire Council acknowledges that the decision to prosecute a business or an individual is serious. The policy is designed to ensure that the council makes fair and consistent decisions about prosecutions. In doing so it will pay full regard to the criteria set out in The Code for Crown Prosecutors issued by the Director of Public Prosecutions.
- 6.0.3 A decision to prosecute will only be made by an officer not involved with the investigation, and authorised in such a capacity in line with the council's scheme of delegation.
- 6.0.4 Council officers charged with investigating alleged offences must give due regard to the provisions of this policy when making recommendations to authorised officers.

### **6.1 General Principles**

- 6.1.1 Whilst each case is unique and will be considered on its own facts and merits, there are certain general principles that authorised officers will follow in their approach to every case.
- 6.1.2 They will be fair, independent and objective. They will not let any personal views about a suspect's, victim's or witness's ethnic or national origin, disability, sex, religious beliefs, political views, or sexual orientation influence their decisions.
- 6.1.3 Authorised officers have a responsibility to ensure that the right person is prosecuted for the right offence. They will always act in the interests of justice and not solely for the purpose of obtaining a conviction.

### **6.2 The Decision to Prosecute**

- 6.2.1 In making a decision on prosecution the authorised officer will apply two tests. Application of these tests will ensure that all relevant factors are considered and that fair consistent decisions are made about each potential prosecution.
- 6.2.2 The first test is consideration of the evidence. If the case does not pass the evidential test a prosecution must not go ahead no matter how serious the case is. If the evidential test is satisfied the authorised officer will consider if it is in the public interest to prosecute. A prosecution will only be taken if both tests are satisfied.

### **6.3 The Evidential Test**

6.3.1 Authorised officers must be satisfied that there is sufficient admissible reliable evidence to provide a realistic prospect of conviction.

#### **Sufficient**

6.3.2 There is only sufficient evidence to provide a realistic prospect of conviction if, when presented with that evidence, 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 an objective test and when applying it to the case the authorised officer will aim to be completely impartial. They will also have regard to any statutory defence that is available

#### **Admissible**

6.3.3 There are legal rules which might not allow evidence that appears relevant to be given at a trial. If the authorised officer believes that some of the evidence falls within this category, he/she will satisfy him/herself that there is enough other evidence for a realistic prospect of conviction.

#### **Reliable**

6.3.4 Evidence may be regarded as unreliable for a number of reasons. It may be affected by factors such as age, intelligence or level of understanding, by the background of the witness, for example, a motive that may affect his or her attitude to the case, or a relevant previous conviction, or a general concern over the accuracy or credibility of the evidence.

6.3.5 Where there are such concerns, authorised officers will not ignore the evidence, but will look at it closely in conjunction with the other evidence to decide whether there is a realistic prospect of conviction.

### **6.4 The Public Interest Test**

6.4.1 The general principle of this policy is that a prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution, or it appears more appropriate in the circumstances to divert the defendant from prosecution.

6.4.2 The public interest factors will vary from case to case. Not all factors will apply to each case and there is no obligation to restrict consideration just to the factors listed.

#### **Public Interest Factors in Favour of Prosecution**

6.4.3 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) a conviction is likely to result in a significant sentence;
- b) a conviction is likely to result in a confiscation or any other order;
- c) a weapon was used or violence was threatened during the commission of the offence;
- d) the offence was committed against a person serving the public;



- e) the risk presented to the public, trade or environment by the commission of the offence was serious or widespread;
- f) the defendant has failed to comply, in part or in full, with a statutory notice;
- g) the defendant acted fraudulently, wilfully or negligently;
- h) harm was caused to human health, animal health or the environment;
- i) the defendant was in a position of authority or trust;
- j) the evidence shows that the defendant was a ringleader or an organiser of the offence;
- k) there is evidence that the offence was premeditated;
- l) there are grounds to believe that the defendant was motivated solely by personal gain;
- m) there is evidence that the offence was carried out by a group;
- n) the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- o) the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- p) there is a marked difference between the actual or mental age of the defendant and the victim, or if there is any element of corruption;
- q) the defendant is alleged to have committed the offence whilst under an order of the court;
- r) the offence was committed in the presence of or in close proximity to a child;
- s) the defendant's previous convictions or cautions are relevant to the present offence;
- t) there are grounds for believing that the alleged offence is likely to be continued or repeated;
- u) the offence, although not serious in itself, is widespread in the area where it was committed;
- v) a prosecution would have a significant positive impact on maintaining community confidence;
- w) the outcome of the prosecution might establish an important precedent or draw public attention to national or local campaigns or issues.

### **Public Interest Factors against Prosecution**

#### 6.4.4 A prosecution is less likely to be needed if:

- a) the alleged offence was committed as a result of a genuine mistake or misunderstanding of the circumstances or of the law;
- b) 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;
- c) the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution simply because they have offered compensation);
- d) there has been a long delay between the alleged offence taking place and the decision made to prosecute, unless:-
  - i) the alleged offence has only recently come to light;
  - ii) the offence is serious;
  - iii) the complexity of the offence has meant that there has been a long investigation;
  - iv) the delay has been caused in part by the defendant;
- e) the Court is likely to impose a very small or nominal penalty;
- f) 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;
- g) the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health;
- h) details may be made public that could harm sources of information, international relations or national security.

#### 6.4.5 Deciding on the public interest is not simply a matter of adding up the number of factors on each side as some factors will be more important than others. As such authorised officers will 'weight' factors in making an overall assessment.

## 6.5 Diversion from Prosecution

- 6.5.1 When deciding whether a case should be prosecuted authorised officers will consider the alternatives to prosecution in pursuit of the aim to change inappropriate behaviour and to deter future non-compliance.
- 6.5.2 A conviction can have wide ranging and long lasting effects, and particular care will be taken when deciding whether it is in the public interest to prosecute in cases involving a young person. For the purposes of this policy a young person is someone under the age of 18 years.

## 7. Publicity

- 7.1 In order to deter others the council will aim to publish any prosecution or other enforcement action.

## 8. Review

- 8.1 This policy will be reviewed annually, or sooner if necessary, to reflect statutory changes or national guidance.

## 9 Appendices

Appendix A – Housing and Council Tax Benefits Supplementary Enforcement Policy

Appendix B – Building Control Supplementary Enforcement Policy

Appendix C – Planning Supplementary Enforcement Policy

Appendix D – Public Rights of Way Supplementary Enforcement Policy

Appendix E – Public Sector Housing Supplementary Enforcement Policy

### Version Log

<i>Version</i>	<i>Status</i>	<i>Date</i>	<i>Description of Change</i>	<i>Reason for Change</i>	<i>Pages</i>
1.0	Draft	May 2011	Document Creation		
2.0	Draft	June 2011	Various content	Comments from EHTS and Housing & Council Tax Benefit	All
3.0	Draft	July 2011			
4.0	Draft	August 2011	Various Content	Review of Regulatory Burden	All
5.0	Draft	January 2012	Various Content	Consultation with Cabinet Members	All
6.0	Draft	February 2012	Various Content	Consultation with Chair and Vice Chair of Overview and Scrutiny	All
7.0	Draft	March 2012	Addition to para 2.6	Addition of AHVLA and the Gambling Commission following consultation.	4