

SHROPSHIRE COUNCIL

STREET WORKS ENFORCEMENT POLICY 2018

Purpose of Document

This document sits under the Shropshire Council Better Regulation and Enforcement Policy which sets out the guidelines on enforcement and regulation of Shropshire Council functions.

1. General Principles

- 1.1 Utilities have a statutory obligation to apply for street works permits and serve the appropriate subsequent notifications for their works on the Shropshire Council network by the registration of those notifications in the Shropshire Council Local Street Works Register. This is in accordance with relevant legislation such as the New Roads and Street Works Act 1991 (NRSWA), the Traffic Management Act 2004 (TMA), the Traffic Management Permit Scheme (England) Regulations 2007 (TMPSR), the West and Shires Permit Scheme (WaSP) Regulations along with the associated regulations and Codes of Practice. Failure to provide accurate information within the relevant notifications, and failure to serve notifications in a timely manner represent offences under the relevant sections of the legislation.
- 1.2 Utilities are required to ensure their works on the Shropshire Council network are carried out in a safe manner in accordance with the NRSWA and associated Codes of Practice. Failure to do so is an offence under the relevant section of the legislation.
- 1.3 Utilities are required to reinstate the road following their works on the Shropshire Council Network in accordance with the NRSWA and the associated Code of Practice. Failure to do so is an offence under the relevant section of the legislation.
- 1.4 Utilities are required to use their best endeavours to co-operate with Shropshire Council as the street authority, in the interests of safety, to minimise inconvenience to people using the street and to protect the structure of the street and the integrity of the apparatus in the street. Failure to do so is an offence under the relevant section of the legislation.
- 1.5 The NRSWA, TMA, TMPSR, and WaSP place a number of other statutory duties and responsibilities on utilities with accompanying offences. Failure to comply with these duties and responsibilities are offences under the relevant sections of the legislation.
- 1.6 Each case will be considered on its own facts and merits. There are however, general principles that apply to the way in which Shropshire Council will investigate and consider proceedings for each case.
- 1.7 Shropshire Council will normally prosecute cases where a decision to prosecute has been made. Shropshire Council will also comply with the disclosures rules, in accordance with the provisions of the Criminal

Procedure and Investigations Act 1996 (as amended by the Criminal Justice Act 2003) and the Attorney General's Guidelines on disclosure.

- 1.8 Where a formal interview under caution is deemed a requirement Shropshire Council will comply with Police and Criminal Evidence Act where required to do so.

2. Types of Offences to be prosecuted

2.1 Shropshire Council may prosecute offences relating to streetworks activities on the Shropshire Council Network, including but not limited to:-

- (a) All streetworks offences under the New Roads and Streetworks Act 1991 (NRSWA), the Traffic Management Act 2004 (TMA), Traffic Management Permit Scheme (England) Regulations 2007 (TMPSR), and the West and Shires Permit Scheme (WaSP).
- (c) All other offences related or incidental to street works where Shropshire Council is Street, Highway or Traffic Authority.

2.2 The above list is not exhaustive and Shropshire Council may prosecute other offences relevant or incidental to streetworks on the Shropshire Council Network, outside of the list of offences set out in this policy.

2.2 Offences listed in paragraph 2.1 above will normally be prosecuted by:

- a) Shropshire Council, or by
- b) Any other approved and designated person or agency acting for and on behalf of Shropshire Council.

3. The Prosecution Decision

3.1 It is recognised that the decision to prosecute an offence is an important and serious one. Shropshire Council will therefore only prosecute if it considers that an offence has been committed and if the evidence shows that there is a realistic prospect of conviction. On deciding on any prosecution action Shropshire Council will always take into account the guidelines set out in the Shropshire Council Better Regulation and Enforcement Policy. These include but are not limited to:

- (a) It would be in the public interest and in the interest of justice to prosecute, or
- (b) Where the relevant offender has shown a previous poor history of compliance under its statutory obligations, or

- (c) The offender has failed to discharge it's liability under the Street Works (Fixed Penalty) (England) Regulations 2007 or the Traffic Management Permit Scheme (England) Regulations 2007.

3.2 The Evidential Test

In deciding whether there is a realistic prospect of conviction, Shropshire Council will have regard to the following:

- (a) Relevance and admissibility of available evidence
- (b) Reliability of evidence relating to the offence
- (c) Reliability of any observation or comment made by the alleged offender
- (d) Reliability of any admissions and confessions including comments recorded by Shropshire Council or in a Works Inspection Report
- (e) Reliability of any information or records contained within the Shropshire Council Local Street Works Register
- (f) Reliability of Prosecution Witnesses
- (g) The general conduct and performance history of the particular utility

If Shropshire Council considers that there is insufficient evidence upon which to base a prosecution, a prosecution will not be brought. However, consideration may be given to other responses, such as issuing the relevant utility with a Non-Statutory Warning Letter.

3.3 Fixed Penalty Notices (FPN)

Section 95A of NRSWA allows Shropshire Council to dispose of certain offences under the NRSWA / TMA by issuing the offending utility with a FPN. The giving of the FPN allows the liability for prosecution to be discharged by payment of a penalty within a prescribed timeframe.

Failure to pay the FPN can result in prosecution for the original offence through the Magistrates' Courts.

Shropshire Council will operate the FPN scheme with due regard to any statutory guidance given by the DfT. Shropshire Council will apply the relevant aspects of the Prosecution Criteria to any decision to give a FPN. The FPN scheme allows Shropshire Council to drive improved performance with Utility Companies by the issuing and monitoring of regular performance reports.

3.4 Public Interest and Interest of Justice

Even where the evidential test has been satisfied, the prosecution of an alleged offence should be in the public interest and in the interests of justice, i.e. must be seen to be appropriate, fair and properly brought. There can be no definitive guidance as to when it may not be in public interest or in the interest of justice to prosecute an alleged offence, as each case will be evaluated on its own individual factors.

Any decision to prosecute will be submitted to and authorised by the Head of Infrastructure and Communities or his/her delegated officers.

4. Shropshire Council Licences.

Shropshire Council Street Works Team deal with the issue, compliance and enforcement of licences in relation to Highways Act 1980, this includes but is not limited to:

- Skips
- Scaffolds
- Hoarding

Failure to comply with the legislation constitutes an offence where applicable and any decision on prosecution will be dealt with under the criteria set out in this Policy.

5. Prosecution Decision Criteria

5.1 Shropshire Council will consider one or more of the criteria below, when making a decision to prosecute:-

- (a) Where the offence was avoidable on the part of the utility company or its agents or where the utility company has shown disregard for regulation and legislation
- (b) Where the offence has caused or could have caused health and safety issues to any persons or the site operatives themselves.
- (c) Where the offence has caused or could have caused avoidable traffic disruption on the Shropshire Council Network or adjacent road
- (d) Where the offence has caused or may cause substantial damage to Shropshire Council assets
- (e) Where the utility company has failed to discharge the offence by way of a FPN issued for that purpose and within the statutory time limit.
- (f) Failure to heed to a previous Non-Statutory Warning Letter about other failures to comply with the legislation, regulations or the associated Codes of Practice.

5.2 In all other cases Shropshire Council will consider issuing a FPN

5.3 Shropshire Council will have regard to the following factors against prosecution:

- (a) Insufficient evidence.
- (b) Where it appears that, in Shropshire Council's opinion, there has been a genuine mistake of fact
- (c) Where, owing to circumstances beyond the offender's control, commission of the offence was unavoidable.
- (d) Where there is no realistic prospect of conviction.
- (e) Where, representation made following the issue of a FPN has been accepted by Shropshire Council.

5.4 Shropshire Council will have regard to the following factors in the decision to discontinue proceedings:

- (a) New evidence not previously available to Shropshire Council that undermines the original enforcement decision
- (b) It becomes evident that there is insufficient evidence to proceed with the enforcement action.
- (c) Where the continuance of proceedings is likely to lead to an abuse of the process of the courts.
- (d) Where continued enforcement is likely to be deemed malicious or prejudicial to Shropshire Council's interest.
- (e) Where the authorised person(s) take the decision to discontinue proceedings due to exceptional circumstances or to withdraw an unpaid FPN in accordance with both sets of 2007 Regulations.

5.5 Under no circumstances should a case be withdrawn for the purposes of seeking compensation from the defendant, except in proceedings for compensation for damages to Shropshire Council assets or recovery of costs.

5.6 Where a case is disposed of other than by prosecution, Shropshire Council may seek to recover any administrative costs incurred in processing the case file.

6. Investigations

6.1 Shropshire Council may investigate any potential offence relating to street works on the Shropshire Council Network using the information contained within the Shropshire Council Street Works Register, or any other relevant source.

6.2 The majority of prosecutions are expected to be evidence based and the likely need to carry out interviews in relation to offences to be minimal. However where there is a need to conduct criminal procedure interviews, Shropshire Council will

have due regard to best practice guide on conducting criminal interviews, as set out in the Code of Practice to the Police and Criminal Evidence Act 1984 (PACE).

7. Disclosure

7.1 Shropshire Council will have regard to the Criminal Procedure and Investigations Act 1996, as amended by the Criminal Justice Act 2003 and the associated Code of Practice in the disclosure of prosecution materials.

7.2 Shropshire Council will retain and preserve all evidence that may be relevant to a prosecution, whether or not that evidence is to form part of the prosecution case.

7.3 Shropshire Council will endeavour in all cases to adopt a consistent approach to disclosure by disclosing prosecution materials in advance of any hearing.

8. Policy Review

8.1 This policy will be reviewed periodically to reflect any changes in the law, regulations, or any Shropshire Council policies in force at the time. Any amendments will be reflected in the policy and published as appropriate.

8.2 A copy of this policy will be published in the Shropshire Councils website and in appropriate cases Shropshire Council will provide a copy of this policy on request.