

# DRAFT

# Shropshire Council

## Better Regulation and Enforcement Policy

### 1.0 Introduction

1.1 This enforcement policy provides guidance to officers, businesses, residents and the general public on the range of options that are available to achieve compliance with all legislation enforced by Shropshire Council. The policy has been agreed by Shropshire Council on .....

1.2 Shropshire Council has responsibility for assisting local residents and businesses, at both a local and national level, to comply with their legal responsibilities. We believe that most businesses want to abide by the law and that most residents act responsibly or behave appropriately towards their neighbours, the wider communities in which they live and with the financial assistance available to them through the Local Authority. We recognise that prevention is better than enforcement, but, that under certain circumstances, formal enforcement action will be necessary against those who flout the law or act irresponsibly.

1.3 We are committed to promoting efficient and effective approaches to regulatory interventions and enforcement without imposing unnecessary burdens. Intelligence-led and targeted regulation is essential in promoting fairness and protection from harm. Shropshire Council fully recognises that effective regulation needs to be proportionate and flexible in order to support and encourage fair competition, economic growth and prosperity as well as promoting safer communities and public confidence, whilst ensuring the highest level of protection for the public. The Council will therefore adopt a positive, proactive and balanced approach to ensure compliance with regulatory matters.

1.4 The Council recognises that effective regulation and enforcement are critical to supporting economic growth and prosperity within Shropshire. Good regulation promotes economic prosperity as much as poor regulation hinders this including enforcement where appropriate. This policy and the way it is implemented fully takes into account the need to support legitimate businesses by means of advice and support/information in the first instance to 'help get things right first time'. Our approach

is one of *'prevention is better than enforcement'*. We will do this by developing our relationships with local business and respond to their needs in a timely fashion with accurate and pragmatic advice.

1.5 Shropshire Council is committed to the secure delivery of appropriate financial benefits to its community ensuring that customers get the benefits they are entitled to. The Council has a responsibility to protect these public funds through investigating individuals/persons who seek to commit benefit fraud and other types of corporate fraud for example tenancy fraud and blue badge fraud. Action commensurate with this policy will be considered in all cases.

1.6 The Council has adopted the principles of good enforcement contained in the Regulators' Compliance Code (see <http://www.berr.gov.uk/files/file45019.pdf>) and the Enforcement Concordat (see <http://www.berr.gov.uk/files/file10150.pdf>). These principles will help businesses to comply with regulations, local residents to abide by their legal responsibilities and Regulators to achieve higher levels of voluntary compliance. They include openness, helpfulness, complaints policies, proportionality, fairness and consistency.

1.7 The Enforcement Management Model is used as a framework where appropriate, and for all Health and Safety enforcement matters, and the Health and Safety Executive's Enforcement Policy Statement is also taken into account: <http://www.hse.gov.uk/pubns/hse41.pdf>.

1.8 We will retain the discretion to depart from national guidelines where doing so will better meet local priorities and circumstances.

## **2.0 Our approach and aims**

### **2.1 Being Customer Focused**

2.1.1 Shropshire Council is continually seeking to improve the service that we provide to our customers to ensure that we achieve high levels of satisfaction. We aim to provide a responsive, efficient and cost-effective service that is truly valued by our service users.

2.1.2 Where we reasonably can, and it is appropriate we will make provision for the particular interests of residents, consumers, business owners, employers and the public; for example, by visiting businesses and residents outside normal office hours at a time when the necessary people are available. Premises that are open during both daytime and the evening can expect to be visited outside traditional office hours.

2.1.3 Shropshire Council has access to translators where such use is appropriate.

## 2.2 Being Fair and Consistent

2.2.1 Shropshire Council will ensure our own policies and practices are fully understood and applied by our officers on the ground. We will invest in their learning and development, and whilst we expect our officers to exercise discretion and work to high levels of professional practice, we have developed safeguards and systems to ensure as far as practicable, that our policies are applied fairly and consistently and that our regulatory and enforcement activities are carried out to a consistent standard.

## 2.3 Being Helpful

2.3.1 Whilst responsibility for compliance with legislation falls to businesses, individuals and residents, we will provide relevant advice and guidance on request. Officers will consider statutory codes of practice and other relevant 'good practice' guidelines or standards as well as current legislation. We will maintain information leaflets/guidance material to enable self-help. Where appropriate, officers will highlight forthcoming legal developments and proactively publicise new or emerging issues.

2.3.2 Our officers will normally identify themselves by name, and a contact details will be provided.

2.3.2 We will seek to support Small and Medium Enterprises, taking into account their circumstances, including any specific issues they may have in achieving compliance.

## 2.4 Using Targeted and Intelligence-led Intervention

2.4.1 Shropshire Council will look to direct regulation and enforcement activity primarily towards those businesses or individuals whose activities give rise to the most serious risk; where the risks are less well controlled or where potential victims are considered vulnerable. Action will be primarily focused on those directly responsible for the risk and establishing who is best placed to control it. In addition the vulnerability of any victim(s) will be a factor in determining enforcement activity.

2.4.2 Shropshire Council will prioritise regulatory effort. Factors that will be considered include complaint levels from service users, matters of statutory nuisance, the existence of statutory powers including duties, the nature of potential breaches and the assessment of risk (e.g. the potential for a particular breach of regulations to cause environmental damage or damage a persons' health and safety).

2.4.3 With respect to businesses, management actions are important in the assessment of risk. Repeated incidents or breaches of regulatory requirements, which are related, may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control. A relatively low hazard site with a poorly managed activity has potential for greater risk than a higher hazard site where proper control measures are in place.

2.4.4 Where formal enforcement action is considered necessary the person responsible will be held to account. Where several persons share responsibility, Shropshire Council will take action against those who are regarded as primarily in breach of the requirements.

## 2.5 Taking a Proportion Response

2.5.1 Shropshire Council will take account of both national priorities for local government enforcement and local priorities based on evidence or emerging need. We will, where possible, direct enforcement towards matters with the greatest risk in line with all relevant Service Strategies and Council priorities.

2.5.2 Where a potential breach of the law is encountered, we will consider the available facts and decide whether to undertake a more detailed investigation into possible criminal offences or to take other action. Where there is a shared enforcement role with another body, liaison will take place at an early stage.

2.5.3 We will ensure that officers who carry out any enforcement activities are authorised under the legislation concerned, are assessed as competent to conduct the duties required, and are aware of, and comply with, the general principles of criminal law and evidence gathering, including the Human Rights Act 1998.

2.5.4 We will aim to:

- change the behaviour of the offender to help prevent re-offending;
- eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that is associated with a criminal conviction;
- take proportionate action informed by the nature of the offence and the harm caused;
- reverse the harm caused by regulatory non-compliance, where appropriate; and
- deter future non-compliance

## 2.6 Being Open and Transparent

2.6.1 We will ensure that this Better Regulation and Enforcement Policy will be available for any interested party to consult, in particular, be accessible via the Council's website.

2.6.2 Officers will clearly distinguish between requirements to comply with legal obligations and other recommendations which are best practice.

2.6.3 Unless immediate action is required to prevent or respond to a serious breach, or where to do so is likely to defeat the purpose of the proposed enforcement action, when considering formal enforcement action, we will discuss the circumstances with those

suspected of a breach and take these into account when deciding on the most suitable approach to take.

2.6.4 We will always be prepared to listen to any representations made by, or on behalf of, a defendant, and a decision to institute legal proceedings will be kept under review.

2.6.5 We will liaise and consult with other relevant enforcement agencies where this is necessary, before deciding on any course of action.

## 2.7 Providing Feedback

2.7.1 The council's complaints policy sets out how to complain or express dissatisfaction about the services we provide.

2.7.2 Any applicable rights of appeal against enforcement decisions will be made known to affected persons at the time and in writing.

2.7.3 We welcome all feedback on our enforcement policy.

## 2.8 Protecting Data and Information

2.8.1 We will look to securely maintain accurate data within the Council, retaining it only for as long as is required. The Council may record and treat information acquired during the course of its functions as intelligence for the purposes of informing and directing enforcement activity. When required the Council will use and comply with the relevant provisions of the Data Protection Act, Freedom of Information Act and Enterprise Act for obtaining and sharing information.

2.8.2 Use will be made of data matching provisions, both internally and externally. Shropshire Council is committed to the use and continuing development of the Housing Benefit Matching Service (HBMS) initiated by the Department of Work and Pensions and the National Fraud Initiative (NFI) initiated by the Audit Commission.

## 2.9 Professional Conduct and Values

2.9.1 In addition to the principles set out in this Policy, officers will always present themselves professionally and courteously. Officers will, as the circumstances allow, announce who they are and in what capacity they are acting. However, there may be occasions when officers legitimately delay identifying themselves until a later stage of an investigation, particularly where they are engaged in authorised covert operations. Officers will carry, and produce an identification card when required or on request.

2.9.2 Officers will engage with individuals and groups fairly, constructively and effectively without discrimination.

2.9.3 Officers will have due regard to the principles of the Police and Criminal Evidence Act 1984, the Criminal Procedures and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000 and all associated Codes of Practice in any investigative work undertaken.

## **3.0 Effective regulation to promote and improve compliance**

### **3.1 Prevention is better than cure**

3.1.1 A key focus of our approach to prevention will involve developing positive and constructive working relationships with local businesses and residents through existing networks and contacts and through our business support function and community groups with named points of contact for regulatory enquiries. We recognise that small businesses, in particular, can be overwhelmed by the scale and complexity of legislation covering their business operations. Our approach is to provide easy access to advice, provide simple, clear and concise information and to provide follow-up advice where it is needed. Where national guidance exists, we will promote this to ensure consistency in its application.

3.1.2 With respect to Housing and Council Tax Benefit entitlement the Council's focus through its Benefits Team, is to provide access to clear and simple advice to help its claimants understand what they are entitled to claim and the process involved in making legitimate claims.

### **3.2 Targeted Intervention**

3.2.1 Many business premises, including local authority premises, are risk rated to inform an intervention programme.

3.2.2 We will focus our interventions on regulated entities where risk assessment shows that both:

- any compliance breach/breaches would pose a serious risk to a regulatory outcome;
- there is high likelihood of non-compliance by regulated entities;
- there is little or no effective audit activities carried out by an appropriate and recognised Trade Organisation.

3.2.2 The Council recognises that planned pre-arranged visits to businesses including the provision of advice, results in the right person being available and helps bolster

voluntary compliance. We will, therefore, make appointments and meet with the right people wherever possible.

3.2.3 However, interventions are also made to businesses for other reasons, including repeated non-compliance, as a result of an allegation or complaint, or for a sample or test purchase and these are likely to be unannounced.

3.2.4 Intelligence and/or complaint monitoring exercises may result in increased levels of interventions with the aim of achieving compliance without necessarily resorting to enforcement action.

3.2.5 Where inspection programmes are held to be appropriate we will wherever practicable coordinate these so that businesses are not subject to multiple inspections from within the Council. We will also work collaboratively with other regulatory agencies to reduce unnecessary burdens where possible.

3.2.6 Council Officers may make combined visits with other agencies where there is a shared and complementary enforcement role and this will be explained at the time.

### **3.3 Sampling/test purchasing exercises**

3.3.1 The purpose of sampling/test purchasing is to protect public health, for market surveillance, to identify infringements and to prevent contraventions.

3.3.2 Sampling/test purchasing is undertaken in response to enquiries/complaints from service users, as part of planned exercises or as a result of officer initiative. Planned exercises are determined based on a risk assessment of local, regional and national statistics and any co-ordinated programmes, concentrating efforts into areas of trade or products in order to ensure the most effective use of resources.

### **3.4 Home Authority and Primary Authority Framework**

3.4.1 We use the Home Authority principle for businesses which have their decision making base in Shropshire and Primary Authority where agreement has been secured, and which act in accordance with the responsibilities outlined in this framework. We will abide by the requirements of Primary Authority guidelines and will actively seek to promote it with appropriate local businesses.

3.4.2 Officers will observe the above framework in respect of businesses with their decision making base outside Shropshire by notifying the relevant Authority of our enquiries at the earliest practicable time and at their conclusion. Officers will undertake to make best use of this framework in determining the most appropriate way to deal with any particular issue.

## **3.5 Statutory Notifications**

3.5.1 Where appropriate the Council will report incidents and enforcement actions to relevant Government bodies and respond appropriately to notifications, such as alerts from the Food Standards Agency and other bodies. Information will be shared with other regulators where it is appropriate to do so.

## **3.6 Intervention/Enforcement in Local Authority Establishments**

3.6.1 Officers will carry out interventions/enforcement within local authority run premises in a manner consistent with any other business.

3.6.2 Any serious breaches of law that may be detected in such establishments will be brought to the attention of the Head of Paid Services without delay to agree on the enforcement approach to be taken.

3.6.3 Contract caterers operating within local authority establishments may from time to time be assessed in accordance with the Food Law Code of Practice and be inspected accordingly.

## **4.0 Dealing with non-compliance**

4.1 Shropshire Council recognises that the majority of businesses and residents we come into contact with are law abiding and want to engage constructively with regulators and we will look to achieve compliance through advice, information and guidance. However, it is also recognised that occasionally things can and go wrong which requires prompt and effective enforcement action.

### **4.1 Process for Escalating Enforcement Action**

4.1.1 When the advisory approach fails to secure an adequate level of compliance formal enforcement action will be the next consideration. A decision to take formal enforcement action will be taken after reasonable efforts to secure compliance have been made, except where the non-compliance is of a nature as set out in 4.2 below and immediate action is deemed necessary and appropriate.

4.1.2 Where evidence of legislative non-compliance has been established, our aim is to achieve the behavioural change necessary in the person who is responsible for the non-compliance and to only escalate to the next level where reasonable efforts has failed to achieve that behaviour change. The following process of escalation will be used until compliance is achieved:



- **Advice, information and assistance** – we will seek to persuade by negotiation the adoption of good practice and to increase understanding of the legislation in order to secure improved levels of compliance.
- **Informal Warnings** - will be used when there is evidence of non-compliance but the nature of that non-compliance is not deemed to warrant formal action. The nature of the non-compliance together with the corrective action necessary to put the matter right will be explained in writing together with a deadline for completing the corrective action. The business or person affected will be afforded the opportunity to provide any explanation or comment if/they consider appropriate and these will be considered by a senior manager.
- **Formal Enforcement Action** – this includes issuing statutory notices, written undertakings and enforcement orders; refusal or revocation of a licence or registration; administering cautions, administrative penalties, penalty charge notices, fixed penalty notices, penalty notices for disorder, Anti-Social Behaviour Orders (ASBO's) and/or legal proceedings through the courts. This course of action will be taken in accordance with statutory legal procedures, relevant codes of practice and any national professional guidance in particular the Code of Practice for Crown Prosecutors.

## 4.2 Circumstances where Immediate Enforcement Action is Necessary

4.2.1 There are circumstances where immediate enforcement action is necessary. Whilst we recognise, as do the majority of the business community and local residents, there is no place for those who deliberately act illegally. This applies to traders operating unfairly by targeting the vulnerable, noisy neighbours who constantly play music too loud, littering or illegal activity pertaining to Housing Benefit. Therefore, our approach to achieving compliance will require a more direct and immediate approach for residents, individuals or businesses who:

- knowingly operate or act in a fraudulent or unfair way whether or not for gain or competitive advantage;
- target unfair trading activity towards the vulnerable members of our society;
- breach road traffic legislative requirements and contravene parking restrictions;
- undertake activities that pose a serious risk to public health, safety and well-being, community safety, the environment or animal health or welfare;
- commit offences deliberately or negligently or which involve deception, or where there is significant economic detriment.

## 4.3 Types of Formal Enforcement Action

4.3.1 Where it is considered necessary and appropriate, enforcement action will aim to:

- change the behaviour of the offender in order to prevent re-offending;
- eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that is associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- reverse the harm caused by regulatory non-compliance, where appropriate; and
- deter future non-compliance.

4.3.2 There is a large range of potential enforcement options available to the Council to seek compliance with the law.

### 4.3.1 No Further Action Necessary

4.3.1.1 There are circumstances where contraventions of the law may not warrant any action being taken. Consideration will be given to whether the resultant cost of action would outweigh the detrimental impact of the contravention. 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 on medical grounds or if the offender is frail and formal action would seriously damage their well-being. In such cases we will advise the offender and any complainant of the reasons for taking no action.

### 4.3.2 Informal Action and Advice

4.3.2.1 For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. It may also be appropriate to consider making a referral to another Local Authority in line with the Home Authority/Primary Authority principles, or external agencies (for example Police, Environment Agency).

4.3.2.2 Repeated failure to comply will result in the escalation of enforcement action.

### 4.3.3 Fixed Penalty Notices (FPN)

4.3.3.1 Certain offences may be dealt with by FPNs, where prescribed by legislation. FPNs are recognised as an effective and visible way of responding to low-level offending. A FPN provides an opportunity to discharge liability for an offence by payment of a penalty and can therefore be used as an alternative to prosecution.

4.3.3.2 Payment of the FPN avoids the creation of a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice we may choose to administer one on a first occasion, without issuing a warning. FPNs will only be issued when sufficient evidence is available to prove the offence and the nature of the offence is suitable for being dealt with in this manner. Non-payment of a FPN is not an offence in its own right, but if the penalty is not paid, the Council can generally prosecute the offender for the original offence. Thus, should a recipient not pay the FPN then alternative enforcement action will be considered in respect of the original breach. FPNs are considered in matters including sales of alcohol to minors, littering and dog fouling.

#### 4.3.4 Penalty Charge Notices (PCN)

4.3.4.1 PCNs are prescribed by certain legislation as a method of enforcement that provides for the offender to pay an amount of money to the enforcer in recognition of the breach. PCNs are primarily issued in respect of parking contraventions. Failure to pay the PCN will result in the offender being pursued by way of a Warrant of Execution issued by the county court that enables the Council to collect the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

#### 4.3.5 Administrative Penalty

4.3.5.1 Under the Social Security Administration Act 1992 an Administrative Penalty may be issued as an alternative to a prosecution in matters relating to Housing and Council Tax Benefit. A minimum penalty of £350 or 50% of the overpayment, whichever is greater (up to a maximum penalty of £2,000) may be offered for offences committed wholly on or after 08/05/12. For offences that are committed prior to, or span, 08/05/12 the Administrative Penalty is calculated at 30% of the determined overpayment.

4.3.5.2 In determining whether to offer an Administrative Penalty there must be sufficient evidence in which to consider commencing criminal proceedings. The offer of an Administrative penalty is more likely in cases where dishonesty does not form part of the offence, it is the first time the customer had caused a fraudulent overpayment or there was a clear lack of intent on the part of the customer.

4.3.5.3 An Administrative Penalty cannot be imposed and there is no obligation on the part of any person to accept it. If accepted that person has 14 days to withdraw their agreement to pay the penalty ('cooling off period'). If the penalty is not paid then civil recovery of the debt will be initiated in the County Court.

4.3.5.3 Where an Administrative Penalty has not been accepted or a person has withdrawn their agreement to pay, then alternative enforcement action will be considered in respect of the original breach. Administrative Penalties are not recorded as a criminal offence.

## 4.3.6 Formal Notice

4.3.6.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately. In other circumstances, they may specify a time limit for compliance. In these circumstances, the time allowed will be reasonable and will take into account the seriousness of the contravention and the implications of the non-compliance.

4.3.6.2 All notices issued will include details of any applicable appeals procedures.

4.3.6.3 Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person/business served with the notice for any cost the Council incurs in carrying out the work.

## 4.3.7 Licence Review

4.3.7.1 The ability to seek a review of an existing licence is an important part of the Licensing Act 2003. Any licensed premises operating in a manner that does not promote the four licensing objectives can be brought to the attention of the Licensing Authority by means of a licence review.

4.3.7.2 The parties able to call for a licence review are 'responsible authorities' and persons who live or are involved in a business in the licensing authority's area and who are affected by the operation of the premises ("other persons").

4.3.7.3 However, any application to have a premises licence reviewed must clearly show how the operation of the individual premises has not promoted, or has worked against, one or more of the Licensing Objectives namely:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.

## 4.3.8 Forfeiture Proceedings

4.3.8.1 This procedure, dealt with through an application in an appropriate court, may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem.

## 4.3.9 Seizure

4.3.9.1 Certain legislation enables officers to seize goods, equipment or documents, for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give a receipt to the person from whom the goods are taken.

## 4.3.10 Injunctive Actions

4.3.10.1 In certain circumstances, for example where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions may be used to deal with repeat offenders or significant consumer detriment. Injunctive action includes agreements and formal undertakings to improve compliance which, if breached, may lead to the obtaining of an injunction in the civil law courts.

4.3.10.2 Where the non-compliance under investigation amounts to anti-social behaviour, such as persistent targeting of an individual or a group of individuals in a particular area, then an Anti-Social Behaviour Order and Criminal Anti-Social Behaviour Order may be sought to stop the activity.

## 4.3.11 Simple Caution

4.3.11.1 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

4.3.11.2 For a Simple Caution to be offered there must be sufficient evidence available to prove the case, the offender must make a clear and reliable admission of the offence prior to the cautioning process, it must be in the public interest and justice will be better served without recourse to legal proceedings in the first instance. The offender must be 18 years or over should not have received a Simple Caution for a similar offence within the last 2 years.

4.3.11.3 For details on the relevant Home Office guidance (Circular 016/2008) visit: <http://www.homeoffice.gov.uk>

4.3.11.4 A record of the caution will be sent to the relevant government body if appropriate, and will be kept on file for 5 years. If the offender commits a further offence, the caution may influence the Council's decision to take a prosecution. If during the time that the caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes. Simple Cautions are an alternative to prosecutions in appropriate cases.

4.3.11.5 If the caution is not administered, because the offender refuses to accept it, the facts of the case will be reviewed again, without the option of a Simple Caution, and a prosecution will result.

#### 4.3.12 Prosecution

4.3.12.1 The Authority will use discretion and have regard to other Enforcement Agency policies in deciding whether to initiate legal proceedings against any individual or business. Any decision will take into account this Policy, the public interest and criteria set down in the Code for Crown Prosecutor. A prosecution will normally ensue where the individual or organisation meets one or more of the following criteria:

- deliberately, negligently or persistently breached legal obligations;
- involves an element of deception, dishonesty, theft or fraud;
- made significant gain or caused significant loss
- deliberately or persistently ignored written advice or formal notices;
- endangered, to a significant degree, the health, safety or wellbeing of people, animals or the environment; or
- assaulted or obstructed an officer in the course of their duties.

4.3.12.2 We will, where appropriate, publish the names of those prosecuted and convicted to help publicise the need for businesses and individuals to comply with the law, or to deter those tempted to disregard their legal responsibilities.

4.3.12.3 We will seek to recover our investigation and legal costs to ensure that the Council tax payers do not suffer through the acts of a minority.

#### 4.3.13 Proceeds of Crime Applications

4.3.13.1 Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Proceedings are conducted according to the civil standard of proof with applications made after a conviction has been secured. The purpose is to recover the financial benefit that the offender has obtained from his criminal conduct.

## 5.0 Determining the appropriate action

### 5.1 Introduction

5.1.1 We will attempt to administer the requirements of legislation by advice and assistance wherever possible. Occasionally, however, it will be necessary to consider instituting legal proceedings.

5.1.2 Each case is unique and must be considered on its own facts and merits. However, we apply the same general principles to every case. When deciding whether to prosecute we will have regard to the evidential test in the Code for Crown Prosecutors, (see [http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/index.html](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html))

5.1.2 A decision to prosecute will not be made unless there is sufficient admissible and reliable evidence that an offence has been committed by an identifiable person, and unless there is a realistic prospect of a conviction. We will also consider any lines of defence which are plainly open to or indicated by the accused and to the public interest.

## 5.2 The Public Interest Test

5.2.1 Factors for and against prosecution will be balanced carefully and fairly. Deciding on the public interest is not simply a matter of adding up the factors on each side but a consideration of how important each factor is in the circumstances of each case and an overall assessment made.

5.2.2 The following considerations are taken from the code and adapted for Shropshire Council. Factors which are less relevant to offences investigated by Shropshire Council are not repeated here, but would still be considered if they were to be relevant.

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

5.2.3 A prosecution is more likely when:

- A conviction is likely to result in a significant sentence or to result in a confiscation or any other order
- There is evidence that the offence was premeditated
- There is evidence that the offence was carried out by two or more people acting together
- The victim of the offence was vulnerable or has been left frightened
- 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
- The risk or nuisance presented to individuals, the public, the trade (including unfair competition between traders), the farming community, animal health & welfare, or the environment is significant or widespread
- The 'defendant' has acted fraudulently/dishonestly, wilfully or negligently, or insufficient steps have been taken to prevent the offence
- The 'defendant' was in a position of authority or trust, or the offence was committed in the presence of, or near to, a child
- The 'defendant's' prior behaviour, previous convictions or cautions are relevant to the present offence

- There are grounds for believing that the alleged offence is likely to be continued or repeated
- The outcome of the prosecution may serve an important, informative purpose, might establish an important legal precedent, might act as a warning to others or would have a significant positive impact on maintaining community confidence
- The defendant committed the offence while under an order of the court

## **Public Interest Factors Against Prosecution**

5.2.4 A prosecution is less likely to be needed if:

- The offence was committed due to a genuine mistake/ misunderstanding (this 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
- The 'defendant' has put right the loss or harm that was caused (but 'defendants' cannot avoid prosecution simply because they have offered compensation)
- 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.
- The 'defendant' 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 real possibility that it may be repeated

## **5.3 Deaths at Work**

5.3.1 Where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case may justify a charge of manslaughter. We will liaise with the police, coroners and the Crown Prosecution Service (CPS), and if they find evidence suggesting manslaughter, pass it on to the police or where appropriate the CPS. If the police or the CPS decide not to pursue a manslaughter case, we will bring a health and safety prosecution if that is appropriate. We will take account of "Work Related Deaths: A Protocol for Liaison".

## **6.0 Application of our policy statement**

6.1 This policy statement applies to all officers when making enforcement decisions. Shropshire Council commits to ensuring that all officers are appropriately trained on this policy and other relevant aspects of enforcement.



6.2 Any departure from this policy must be exceptional, capable of justification and be fully considered by the appropriate Service Manager before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made.

6.3 In cases of emergency or where exceptional conditions prevail, the Head of Paid Service may suspend all or part of this policy, but only when necessary to achieve effective running of Council services and/or where there is a risk of injury or to the health of employees or members of the public.

## **7.0 Review**

7.1 The Enforcement Policy will be regularly reviewed and amendments will be made, as appropriate.

7.2 Amendments to the policy may also be made at other times as a result of identified improvements which contribute to the main aim of the service.

7.3 Review of the enforcement policy will take account of any responses received from affected persons and any other relevant comments.

**Date Policy Approved:**

**Approved by:**

**Date of Implementation:**

**Review Date:**