

Pwyllgor Craffu – Yr Economi, Trigolion, Cymunedau a Llywodraethu

Man Cyfarfod
**Siambr y Cyngor - Neuadd y Sir,
Llandrindod, Powys**

Dyddiad y Cyfarfod
Dydd Llun, 25 Tachwedd 2019

Amser y Cyfarfod
2.00 pm



Neuadd Y Sir
Llandrindod
Powys
LD1 5LG

I gael rhagor o wybodaeth cysylltwch â
**Wyn Richards, Scrutiny Manager and
Head of Democratic Services**
wyn.richards@powys.gov.uk

25/11/19

Mae croeso i'r rhai sy'n cymryd rhan ddefnyddio'r Gymraeg. Os hoffech chi siarad Cymraeg yn y cyfarfod, gofynnwn i chi roi gwybod i ni erbyn hanner dydd ddau ddiwrnod cyn y cyfarfod

AGENDA

1.	POLISI GORFODAETH ERLYNIADAU
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Ystyried adroddiad gan yr Aelod Portffolio ar faterion Datblygu Economaidd, Tai a Gwasanaethau Rheoleiddio, i'w graffu cyn y Cabinet.

(Tudalennau 1 - 24)

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol

Public Protection

Enforcement Policy

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1. Introduction

- 1.1 Services covered by this policy include Environmental Health, Trading Standards and Licensing functions on behalf of Powys County Council. The services provided include food safety, animal health and welfare, health and safety, fair trading, pollution control, and weights and measures. It also has licensing responsibility for a range of matters including alcohol, gambling and taxis.
- 1.2 Powy County Council committed to good enforcement practice. The development of this policy is based upon current legislation, guidance and codes that apply in this context, and in particular the Regulator's Code.
- 1.3 This policy sets out our approach to compliance and enforcement activities, and is intended to establish a consistent approach to enforcement, without placing too heavy a burden on local businesses, organisations and the public. This policy has been subject to consultation across a range of stakeholders.

Feedback is always welcomed using the contact details provided below. Consideration will be given to the inclusion of any suggested improvements in future revisions.

- 1.4 In adopting this policy, we will apply legal powers consistently and fairly, whatever the circumstances. Decisions will not be influenced by the gender, disability, language, ethnicity, religion, political beliefs or sexual preference of the subject, victims or witnesses.
- 1.5 We want to make it easy for you to receive our information. This policy published in English and Welsh on our website. We are also able to provide the document in alternative formats including audio tape, large print and in community languages if needed.

2. Aims of our services

2.1 The National Enforcement Priorities for Wales are:

- To protect individuals from harm and promote health improvement;
- To ensure the safety and quality of the food chain to minimise risk to humans and animal health;
- To promote a fair and just trading environment for citizens and business;
- To improve the local environment to positively influence quality of life and
- promote sustainability.

2.2 Powys County Council adopts these priorities as it aims to safeguard the health, safety and economic wellbeing of those who live in, work in or visit the region; while at the same time maintaining a fair and competitive market place where legitimate businesses can thrive. Our actions are also aligned to the Powys Council 2025 stated vision to support and grow the economy of Powys. We say by conducting fair and proportionate enforcement activities we help to promote good business and good regulation fairly enforced support legitimate business, allowing them to grow. Our actions also support the health and well being of our residents in cases where we intervene on supporting vulnerable persons, on health and safety, food matters and product safety.

2.3 Compliance with the law is encouraged proactively and to this end we want to work with business and individuals to promote this goal through the provision of advice and education, where applicable intelligence led checks on compliance and proportionate responses to regulatory breaches. Our ultimate purpose is to ensure that the “marketplace” functions effectively and that risks to health, social and economic wellbeing are addressed. When that purpose is undermined we will use our legal powers to take action to resolve any unsatisfactory situations and ensure that any wrongdoers are held to account. This is what is meant by the term **enforcement action**.

2.4 We are committed to taking firm action in the following situations:-

- Against those who flout the law, or who deliberately or persistently fail to comply
- Where there is a serious or immediate risk to health and safety; and
- Where it is necessary to protect the more vulnerable in our communities from harm

3. What is this policy for?

3.1 The purpose of this document is to set out our policy in respect of its compliance and enforcement activities, and to give guidance to those affected by it, in particular businesses, consumers and the public. It does not, however, affect the discretion to take legal proceedings when this is considered to be in the public interest.

4. When does this policy apply?

4.1 This policy covers broadly the areas of:-

- Animal Health and Welfare
- Food Safety
- Food Standards
- Health and Safety
- Fair Trading
- Licensing
- Product Safety
- Pollution Control
- Communicable Disease

4.2 In some instances we have developed area specific enforcement policies which to provide detailed information about how and when those areas will carry out a particular type of enforcement. We have one:-

Annex 1 - Proceeds of Crime Policy

Should any conflict ever arise between this policy and those area specific documents, then this overarching Compliance and Enforcement Policy will take precedence.

5. Our approach to compliance and Enforcement

- 5.1 We will ensure that the allocation of resources and effort is targeted where they would be most effective by assessing the risks against our regulatory outcomes. Such risk assessments will inform our approach to regulatory activity including data collection, inspection programmes, business advice and enforcement sanctions. As part of this risk assessment, we will give consideration to the combined effect of the potential impact of non-compliance on regulatory outcomes and the likelihood of that non-compliance.
- 5.2 The Legislative and Regulatory Reform Act 2006, as amended, requires Powys Council to have regard to the Principles of Good Regulation when our services conduct enforcement duties.

We will exercise our regulatory activities in a way which is:

- **Proportionate** – our activities will reflect the level of risk to the public and seriousness of the offence
 - **Accountable** – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures
 - **Consistent** – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities
 - **Transparent** – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return
 - **Targeted** – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.
- 5.3 We embrace the principles of good enforcement established in the Regulators Code as amended

<https://www.gov.uk/government/publications/regulators-code>

which sets out the following:

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow;
- Regulators should provide straightforward ways to engage with those they regulate and hear their views;
- Regulators should base their regulatory activities on risk;
- Regulators should share information about compliance and risk;
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- Regulators should ensure that their approach to their regulatory activities is transparent

However, in certain instances we may conclude that a provision in the Regulators' Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, and based on the available evidence

- 5.4 We are committed in all aspects of its work to promote equality in accordance with Equality statements and policies of our Council. The Service will seek to adopt best practice in pursuit of that commitment, including in relation to the provision of assistance, information and advice. This policy will contribute to the fairness of decision making and will seek to ensure that decisions will not be influenced by protected characteristics of the subject, victims or witnesses. During the monitoring and review of our practices under this policy we will make sure that our enforcement activity reflects this commitment.
- 5.5 In some areas of our work we have a shared enforcement role with other agencies, some examples being the Health and Safety Executive, National Resources Wales, Her Majesty's Revenue and Customs and the Police. Sometimes it will be more appropriate for other enforcement agencies or other local authorities to deal with particular breaches of legislation, in these circumstances the service may pass details of offences to such agencies. In circumstances where a shared or complementary role exists, we will still adhere to this Compliance and Enforcement Policy, but the other agencies will retain the right to take whatever action that they consider is necessary.

5.6 When we exchange information on enforcement activities with our partner agencies, we will do so in accordance with any established methods of information sharing and legal requirements, including the General Data Protection Regulations and the Crime and Disorder Act 1998. We will work closely with other service areas within the councils, and appropriate external regulators to promote regulatory compliance in all relevant areas, food law and fair trading.

6. Advising on rules

6.1 Advice to business will be provided proactively and also in response to specific requests for guidance. Such advice will be given clearly and in plain language and will be confirmed in writing on request. Legal requirements will be clearly distinguished from best practice, codes of practice, guidance and other advice.

6.2 Officers will be encouraged to promote compliance with legal requirements, by raising awareness of relevant standards and legal requirements, by means of media releases, distributing leaflets, social media, face-to-face contact and through business and community partnerships.

6.3 In offering advice to businesses, Powys will act promptly. Those businesses with which it has a Primary Authority agreement will be given priority when heavy demands are placed on limited staff resources. The Primary Authority arrangements of other local authorities will be respected.

6.4 The Service supports the Government's '**golden rules**' for guidance on regulation and states it should be:

- Based on a good understanding of users
- Designed with input from users and their representatives
- Organised around the user's way of working
- Easy for the intended users to understand
- Designed to provide users with confidence in how to comply with the law (i.e., no use of legal disclaimers of liability)
- Issued in good time
- Easy to access
- Reviewed and improved

6.5 Businesses approaching the Service for advice on any non-compliance can in the main do so without fear of automatically triggering an enforcement action. Nevertheless there will be occasion in the circumstances outlined in 2.4 above, or when there is a history of noncompliance where after due consideration, enforcement action is unavoidable.

7. Checking compliance

7.1 Where applicable, services will adopt an intelligence-led approach to ensure that its resources are most effectively targeted. A number of risk assessment frameworks across its areas of work will be utilised to determine the frequency of checks on compliance which includes inspections of and other visits to business premises, taking samples, making of test purchases and so on.

7.2 Complaints received by the Service about alleged non-compliance will be assessed on an individual, case by case basis and allocated to an appropriate officer for investigation/action as necessary.

7.3 After dealing with issues of non-compliance by way of advice, the Service will follow up to ensure that the areas of concern have been rectified and the business is fully compliant.

Where remedial work has been required, an explanation will be given as to why it is required, and over what time-scale it has to be completed.

8. Responding to Breaches of the Rules

8.1 Overview

In responding to breaches of the law, a range of actions is available to the Service, and these are set out in 8.4 below. The appropriate action will be determined following careful consideration of the particular facts of each individual case, and taking into account the approach of the alleged offender and any comments they wish to be taken into consideration.

We will normally take a stepped approach within the hierarchy of enforcement, and progress to taking formal action when informal means have failed to achieve the desired effect.

There may be circumstances where it is suspected that an offender has committed offences across a number of local authority areas. It may be more appropriate for another local authority outside of our area to take enforcement action even when an offence has been committed within the Powys County Council area.

Conversely there may be occasion when it would be more appropriate for the Service to take enforcement action in respect of offences that occurred elsewhere. In such circumstances we may enter into a legal agreement for one authority to take the lead role, as appropriate, making use of the provisions of Section 19 of the Local Government Act 2000, Section 222 of the Local Government Act 1972 or any other enabling provisions or the provisions of the Consumer Rights Act 2016. The rationale for making these decisions will be documented within the legal process.

8.2 Conduct of Investigations

8.2.1 All investigations will be carried out with due regard to the following legislation and any associated guidance or codes of practice, in so far as they relate to Powys.

- the Criminal Procedure and Investigations Act 1996
- the Police and Criminal Evidence Act 1984
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998
- the Protection of Freedoms Act 2012

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

8.2.2 Our procedures for interviewing alleged defendants follow the principles set out in the Police and Criminal Evidence Act 1984, as amended, and the relevant associated Codes of Practice.

8.2.3 Enforcement powers are provided by the legislation under which our officers are authorised, and staff will use these powers when

necessary, but always in a proportionate manner. Officers will reasonably expect co-operation during the investigation of alleged contraventions and it can be an offence to obstruct an authorised officer in the course of their duties.

8.2.4 Where officers exercise their powers of seizure, the person from whom any goods or documents are seized (or their representative) will be advised of the fact and provided with a receipt. Seized items will be stored securely and in accordance with documented procedures

8.2.5 Offenders are not normally subject to the possibility of arrest under the law enforced by the services within Powys County Council, however there are some exceptions. These include offences under the Trade Marks Act 1994, and other law, subject to the necessity test of section 24 of the Police and Criminal Evidence Act 1984, for example when the bringing of a case would be hindered by the disappearance of the offender.

8.2.6 All investigations will be completed in a **timely** fashion and having regard to any time limits for bringing formal action prescribed by specific pieces of legislation and without undue delay.

8.2.7 Where the Council has an interest in a premises it will carry out its enforcement duties in exactly the same way that it does in other premises in which it does not have an interest. Furthermore, it will ensure that the attention received is in accordance with the criteria applied to other duty holders.

8.3 Communication

8.3.1 Our staff will always communicate with any Primary Authority or Home Authority at the earliest possible opportunity in an investigation.

8.3.2 Those affected by enforcement action, including witnesses and defendants, will be kept informed of the progress of investigations. This will be done in a clear, appropriate and timely manner. As decisions are made regarding the direction in which an investigation will be concluded, the defendant(s) will receive written confirmation of the intended course of action. This will be

provided as soon as practicable, together with information on rights to representation and rights to appeal. There is no right of appeal against the decision to prosecute.

8.3.3 Where appropriate, the results of our prosecution cases will be published through different media outlets and together with any partners involved in proceedings or the case. Such results may also be drawn to the attention of interested parties including victims and witnesses.

8.4 Decisions on Enforcement Action

A range of enforcement outcomes is available to the Service, as detailed below. The appropriate action will be determined following careful consideration of the circumstances of each individual case.

We will use compliance advice and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent reoccurrence.

If a similar breach is identified in the future, this letter will be taken into account in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction, but it may be presented in evidence as part of the factual matrix of a bad character application.

We recognise that where a business has entered into a Primary Authority Partnership, the Primary Authority may provide compliance advice and support, and will take such advice into account when considering the most appropriate enforcement action to take. We may discuss any need for compliance advice and support with the Primary Authority.

We will have regard to the Crown Prosecutors Code of Practice with respect to the suitability of disposal of any alleged breach:

There are a number of civil remedies and criminal enforcement actions available to the Service:-

8.4.1 Civil Remedies

8.4.1.1 Voluntary Undertakings

We may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Service will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

8.4.1.2 Injunctive Actions

In some circumstances the Service may seek an injunction or order from the court that an identified breach is rectified and/or prevented from recurring, or it may control or prohibit a particular activity in the future. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with an injunctive action constitutes contempt of court, a serious offence which may lead to imprisonment.

8.4.1.3 Civil Sanctions

The Regulatory Enforcement and Sanctions Act 2008 enables the government to give local authorities the power to impose various new civil sanctions. These options are:-

- The issuing of a fixed monetary penalty notice
- The issuing of a variable monetary penalty notice
- The issuing of a compliance notice
- The issuing of a restoration notice
- The issuing of a stop notice
- Permitting a business to make an enforcement undertaking

In respect of certain legislation, local authorities in Wales currently have powers to impose:-

Fixed Monetary Penalties

The Service may impose Fixed Monetary Penalties, which are capped at a relatively low level and are not intended to be used for more serious cases of non-compliance. Fixed Monetary Penalties are not criminal fines and do not appear on an individual's criminal

record. Fixed Monetary Penalties cannot be used in conjunction with any other sanction.

Discretionary Requirements

The Service has powers under certain legislation to impose Variable Monetary Penalties and Non-Monetary Discretionary Requirements. Variable Monetary Penalties may be imposed up to a maximum level set out in the relevant legislation. Non-Monetary Discretionary Requirements are requirements to take steps to ensure that a breach does not continue or recur. Where the Service chooses to impose Non-Monetary Discretionary Requirements it will clearly set out what those steps should be and the time period within which they must be completed. A failure to comply with the requirements is likely to result in a financial penalty. Variable Monetary Penalties and Non-Monetary Discretionary Requirements may be used in combination.

Should the Government make additional sanctions available to the Service, we will comply with the legislative requirements for their use, provide guidance on how we will use these penalties and publicise details of any case in which these sanctions are used.

8.4.2 Criminal Enforcement Actions

8.4.2.1 Statutory Notices

In respect of many breaches, the Service has powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default (see 8.4.4 below).

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

8.4.2.2 Fixed penalty notice and penalty notice for disorder

The Service has powers to issue fixed penalty notices in respect of certain breaches.

These notices give the offender the opportunity to avoid prosecution by payment of the prescribed sum in recognition of the offence. The decision to offer an offender a Fixed Penalty Notice or in respect of underage sales of alcohol a Penalty Notice for Disorder is at the discretion of the investigating officer. They will only be issued where the evidence would have been sufficient to support a prosecution.

Payment of a fixed penalty does not provide an individual immunity from prosecution in respect of similar or recurrent breaches. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issuing of a fixed penalty notice.

8.4.2.3 Financial investigations and Confiscation of Assets

We will conduct financial investigation under the Proceeds of Crime Act 2002 and Money Laundering Regulations to assist investigations and determine levels of criminal benefit from criminality and any assets available and will apply for disclosure and enforcement orders to assist this. In cases where a suspect is likely to dissipate assets or where we deem it proportionate we will restrain assets where criminal proceedings are being considered. We will not make a decision to institute legal proceedings on the basis of purely seeking to obtain incentivisation.

If any monies are received from the Home office incentivization system then those monies will be held in a reserve account and reinvested in proceeds of crime work and to support crime and disorder strategies relevant to the service that obtained them, as well as community schemes to reduce crime and disorder.

8.4.2.4 Enforcement Orders

In some circumstances the Service may seek an order from the Court. Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Service is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, a court order will generally only be sought where there are serious concerns about compliance with voluntary undertakings or a notice.

In some instances, the Service may ask the Court for forfeiture orders in respect of seized goods or articles with a view to their destruction / confiscation.

8.4.2.5 Health and safety offences

When circumstances find that enforcement will be undertaken under health and safety legislation, consideration will also be taken of the Health and Safety Executive's Enforcement Policy Statement:

<http://www.hse.gov.uk/pubns/hse41.pdf>

Furthermore, any enforcement decision for health and safety will have been taken through this Enforcement Management Model.

For matters of Health and Safety the Independent Regulatory Challenge Panel will look into complaints regarding advice given which you consider incorrect or goes beyond what is required to control the risk adequately.

The challenge panel provides an independent means for any person (whether companies or individuals) to complain about advice given or actions put upon them by the Health and Safety Executive (HSE) or Local Authority (LA) health and safety regulators. It will not consider the actions taken, or advice given, by the regulator where there are existing statutory mechanisms of appeal. In the first instance complainants should seek to resolve the matter locally with the regulators and their managers. If this is not possible they can raise their complaint with the panel. The panel will focus on substantive issues only.

<http://www.hse.gov.uk/contact/challenge-panel.htm>

8.4.2.5 Simple Caution

A simple caution (previously known as a formal caution) is an alternative to prosecution, where the circumstances are such that the caution is likely to be effective and its use is appropriate to the offence. It is an admission of guilt, but it is not a form of sentence, nor is it a criminal conviction.

Simple cautions are issued by a senior officer and can only be given to an offender who is over 18, where

- There is sufficient evidence to give a realistic prospect of a conviction,
- The offender admits their guilt, and
- It is considered to be in the public interest to use a simple caution rather than institute criminal proceedings.

There is no legal obligation for a person to accept the offer of a simple caution, but failure to accept a caution will normally result in prosecution for the offence each case will be considered on an individual basis.

Where the offence committed is a recordable offence, a simple caution will appear on an offender's criminal record. It is likely to influence how the Service and others deal with any similar breaches in the future, and may be cited if it is relevant to any proceedings in the future. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with guidance on the cautioning of adult offenders:

<https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors>

For each simple caution the manager in the case will decide whether or not it is reasonable to consider whether a charge be invoiced to the person/business/company subject of the of the investigation. This will not be conditional on signing the caution but would be issued when one of the the following occurs:

- Where there are significant offences and the service has conducted extensive costs to investigate the offences
- Where the Professional lead believes it is proportionate to the offending involved

8.4.2.6 Prosecution

We may prosecute breaches of legislation, particularly in respect of those who flout the law or who act irresponsibly, or where there is an immediate risk to health and safety. Where other enforcement actions, such as voluntary undertakings, statutory notices or a caution have failed to secure compliance previously, then prosecution is more likely.

As with the preceding enforcement options, a number of factors will be taken into consideration including but not exclusively-

- The seriousness of the offence
- The previous history of the offender
- Any statutory defence available
- Action taken to avoid recurrence
- Any explanation offered, and if the law allows the circumstances and attitude of the offender
- What course of action will best serve the public interest
- Whether there is a realistic prospect of conviction
- The decision as to whether prosecution is the most appropriate course of action in a particular case will be made
 - In accordance with this Policy
 - In accordance with the Code of conduct for crown prosecutors <https://www.cps.gov.uk/publication/code-crown-prosecutors>
 - and in accordance with statutory requirements, taking into consideration all relevant codes of practice, and without any unnecessary delay.

In following the Code for Crown Prosecutors, a prosecution will only be commenced where our Council is satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the defendant(s). In addition the Council must be satisfied that having considered all the relevant facts and circumstances of the case, and having regard to the criteria established by the Code

for Crown Prosecutors, a prosecution would be in the public interest.

Having considered all the relevant facts and circumstances of an individual case, the Head of Service will decide on a course of action to the local authority based upon the recommendation of the Professional Leads for the relevant service and after taking legal advice.

We will ensure that the constitution of the authority reflects the scheme of delegation for the institution of proceedings and that this is kept up to date.

In certain circumstances such as matters relating to health and safety, the institution of legal proceedings will be in the name of the authorised officer.

A successful prosecution will result in a criminal record. There is a range of punishments available to the court depending on the charge, the particular circumstances of a case and the offender. These include a discharge, a fine, a community order, or a prison sentence in serious cases. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits, which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors, and may have consequences for individuals seeking certain types of employment and proceeds of crime proceedings. A record of the action will be recorded on internal systems and also disclosed to any relevant databases such as the Sanctions Information Database (Trading Standards) and where applicable PNC/PND.

The head of service can review any decisions and also any further outcomes suggested by the defendant/ defendant's solicitor, which are further outcomes as long as they meet the overriding principles set out in the code of prosecutors.

The Service will also consider applying for other orders on conviction where appropriate, for example a Criminal Behaviour Order.

8.4.3 Other remedies

8.4.3.1 Refusal, Suspension or Revocation of Licences

Powers exist to review, suspend and revoke a range of licences. Some of these powers are delegated to officers acting under section 113 of the Local Government Act 1972, but where legislation prescribes or the authority has reserved the right under its scheme of delegations, such actions can only be taken by a sub-committee of the relevant participant Council. Licence holders have the right to attend hearings and to be informed of their right of appeal against a decision. When considering future licence applications, the previous breaches and enforcement action will be taken into account.

9. Review of this Policy

- 9.1 This policy will be updated and developed as required by changes in the law and will be reviewed on an annual basis for continued accuracy and adherence to it by staff.
- 9.2 Data on equality profiles of those affected by this policy will be collated and monitored for any discriminatory practices.

10. Comments and Complaints

- 10.1 We strive to provide a high standard of service. However, for anyone wishing to make a complaint about the service they have received from us, there is a formal complaints procedure, to ensure that concerns are dealt with quickly and consistently. Complaints can be made in person, in writing, by email or by using the online complaints form and details can be found at this link

<https://en.powys.gov.uk/complaints>

Any comments or complaints about the application of this policy should be addressed to Powys County Council at the address given in the introduction to this Compliance and Enforcement policy. If it is felt that a complaint about this policy has not been satisfactorily concluded, it will be passed to the Director of Environment and will be dealt with in accordance with the formal complaints procedure detailed above.

Our Head of Service is Gwilym Davies and our Director is Nigel Brinn, who is the Director of Environment, and contact points are via emails supplied: Gwilym.davies@powys.gov.uk and nigel.brinn@powys.gov.uk.

However, sometimes your concern or complaint will not be dealt with via the Corporate Concerns and Complaints Policy, examples include:

- An appeal against a 'properly made' decision made by the Council
- A means to seek change to legislation or 'properly made' policy decision.
- Decisions in respect of which there is a separate right of appeal or review e.g via a Magistrates Court.

Powys County Council - Proceeds of Crime Policy

1. About this policy

1.1. This policy explains how Powys County Council Trading Standards will approach Financial Investigations. This document is primarily aimed at those staff who investigate criminal offences and those who have been accredited by the National Crime Agency as Financial Investigators.

1.2. Powys Trading Standards recognises that the investigation of offences that are to the detriment of Powys consumers and businesses, and the utilisation of the powers given within the Proceeds of Crime Act 2002 (POCA), can make a significant contribution to the disruption of criminal enterprises through the use of money laundering investigation to complement and aid criminal investigations and through the recovery of criminal assets.

1.3. Powys Trading Standards is, therefore, committed to maintaining a fraud/financial investigation unit, incorporating money laundering and confiscation capability to tackle offenders at all levels of criminal activity.

2. General principles

2.1. Powys Trading Standards, in considering the need for utilising the powers under POCA, has taken account of:

- i. Its contribution to local crime and disorder strategies and other corporate priorities;
- ii. The need to consider pre-conviction orders as part of the prosecution process in connection with money laundering investigations and the need to consider post-conviction orders as part of confiscation investigations;
- iii. Its role in tackling 'lifestyle criminals' such as counterfeiters, persistent rogue traders and loan-sharks;
- v. The need to ensure that crime doesn't pay and is seen not to pay;
- vi. Helping to meet the expectations of legitimate businesses and consumers;

2.2. Powys Trading Standards will promote the use of financial investigations as an integral part of criminal investigations which may lead to confiscation. Confiscation is not just for serious criminals but applies in every case of acquisitive crime.

2.3. Acquisitive crime describes offences where the perpetrator derives material gain from criminal activity. This encompasses crime types such as fraud, car clocking, rogue trading and counterfeiting.

2.4. When a person has benefited from their crime, the objective is to secure a criminal conviction and remove any benefit derived from criminal activity. A confiscation order made under POCA is an effective way of achieving this.

2.5. Our investigators are aware of the opportunities for money laundering and confiscation proceedings, which are normally undertaken by Financial Investigators, and any actions they can take to support the process.

2.6. Investigators will refer suitable cases for financial investigation and are reminded that failure to follow this policy, in referring acquisitive crimes to the Financial Investigation Unit (FIU) may result in the true extent of the criminal activity not being uncovered, the correct

perpetrators being prosecuted and reduction of the amount of assets seized and thereby reduce the deterrent aspect which is required to assist in reducing crime.

2.7 Where it is prudent to do so Powys will conduct financial investigations for other local authorities or bodies.

3. Statement of policy

3.1. Powys Trading Standards Financial Investigation Unit (FIU) will carry out a financial investigation for all cases where there are alleged or convicted offences of an acquisitive crime, with a view to making an application to court for a confiscation order to be made to the value of the benefit derived from crime.

3.2. Referrals to the FIU will be considered on merit by the FIU but will be prioritised with reference to one or more of the following factors;

i. Propensity of the defendant(s) to commit offences nationally or

ii. Where the victims are deemed to be particularly vulnerable or at risk from the defendant(s) criminality.

iii. Where the criminal investigation would struggle to deal with the defendant, or their offending effectively, without the FIU's parallel support.

iv. Where financial benefit from the defendant's criminality is clearly significant and realisable assets have already been identified.

v. Special circumstances, e.g. in appropriate cases where the benefit calculated is significant but assets cannot be found, it may be prudent to pursue confiscation proceedings in order to obtain a 'nominal order' of say £1.00. POCA allows cases to be revisited in the future so where assets subsequently come to light then the 'available amount' may be re-calculated in terms of satisfying the Order using the recently discovered assets. The use of nominal orders may also deter defendants from re offending.

3.3. Powys Trading Standards will seek to use the provisions of the Proceeds of Crime Act 2002 and seize cash of £1,000 and above if it is found whilst lawfully on premises, or whilst searching any person or vehicle. The seizure can only be carried out by Police officers and/or an accredited financial investigator. The FIU will investigate the origins of any cash so seized with a view to requesting its forfeiture at the Magistrates' Court.

3.4. Powys Trading Standards Financial Investigators are committed to applying for forfeiture under POCA; after confiscation under POCA has been considered.

4. Implications of the policy

4.1 Financial Implications

4.1.1. The full implementation of this policy involves a significant opportunity to have a proportion of the amounts confiscated under POCA returned to the Authority under the incentive scheme operated by the Home Office. Any funds received as a result of the "incentivisation" scheme must be used for the further prevention or reduction in crime or further asset recovery in areas related to Trading Standards.

4.2 Staffing and training

4.2.1. All Financial Investigators receive training from the Proceeds of Crime Centre of the National Crime Agency and must receive this training before being accredited. Financial

Investigation training should form part of Powys Trading Standards routine training and development programme for designated management and investigation personnel.

4.2.2. Managers do not necessarily require the level of training and awareness provided by financial investigation-specific courses but will meet the requirements of the FISS system. However, It is essential that a Senior Strategic Manager is familiar with the procedures relating to financial investigation and is designated a Senior Appropriate Officer, by National Crime Agency or equivalent accreditation and this role will be undertaken by Clive Jones Professional lead, Manger responsible for Trading Standards for Powys Council.

4.3 Existing Partnership Agreements

4.3.1. There are many law enforcement agencies that conduct financial investigations. Powys Trading Standards will actively work with these agencies to ensure it maximises the amount of money and assets seized under POCA legislation.

4.3.2. Some of these organisations are:

- i. Dyfed Powys Police and the National Crime Agency (NCA)
- ii. Her Majesty's Revenue and Customs (HMRC)
- iii. The Consumer and Markets Authority (CMA)
- iv. Other local authorities (Benefit Fraud)
- v. The Financial Conduct Authority (FCA)
- vi. Department of Work and Pensions (DWP)
- vii. UK Border Agency
- viii. Post Office Investigation Unit

4.4 Risk assessments

4.4.1. This policy is compliant with the requirements of health and safety legislation and internal health and safety procedures. The risk assessment for Investigating Officers applies and will be reviewed annually.

5. Consultation

5.1. Consultation has taken place with key stakeholders, including:

- i. Trading Standards Service Manager
- ii. Strategic Manager for Financial Investigation Unit

5.2. It is in accordance with the service's Health and Safety; Diversity & Equality, Data Protection, and IT policies

6. Monitoring / review

6.1. The Strategic Manager for the FIU will ensure that all referrals under POCA are fully investigated and where appropriate confiscation or forfeiture of assets is applied for.

6.2. The Strategic Manager for the FIU will ensure that this policy is reviewed annually and will consider any changes to legislation, legal challenges to Powys Trading Standards and any discrepancies raised with regard to the policy.

7. Related policies and information sources

- i. ACPO Practice Advice on the Management and Use of Proceeds of Crime Legislation
- ii. ACPO Practice Advice on Financial Investigation.
- iii. LACORS LGR Regional Framework on Proceeds of Crime for Trading Standards Authorities

8. Legal basis

8.1. The legal basis within which this policy is to operate can be found in:

- i. Criminal Justice Act 1993;
- ii. Proceeds of Crime Act 2002;
- iii. Terrorism Act 2000;
- iv. HMRC Gateway Procedure;
- v. The Police and Criminal Evidence Act 1984;
- vi. The Human Rights Act 1998;
- vii. The Criminal Procedure and Investigations Act 1996 (CPIA);
- viii. The Regulation of Investigatory Powers Act 2000 (RIPA);
- ix. The Data Protection Act 1998 (DPA);
- x. The Freedom of Information Act 2000.