

# Merthyr Tydfil County Borough Council

## Public Protection Services



POLICY	REF: POL(ALL)1
<b>COMPLIANCE AND ENFORCEMENT POLICY</b>	

ISSUE NO.	PREPARED BY	APPROVED BY	SIGNATURE	EFFECTIVE FROM
4	Paul Lewis	Full Council	<i>D.P. Lewis</i>	4 <sup>th</sup> December 2024

REVISION SUMMARY			
<p>27th March 2013 – Approved by Full Council</p> <p>31st January 2014 – Reviewed – no change but will need amending when Regulators Code comes into force in April 2014 and to reflect proposed changes in management structure.</p> <p>21st June 2016 – reviewed following recommendation by Food Standards Agency</p> <p>20<sup>th</sup> March 2019 – Review and submission to Council for approval</p> <p>22nd September 2023 – Internal review to account for re structure and for the Services only and removal of Housing function (relating to public sector housing and retained functions including strategy, advice and homelessness) but Housing Enforcement function, within Environmental Health, remains within scope of this policy. The removal of Home to School transport from scope of policy. Changes reflect the re structure and include all functions within the span of control of Head of Public Protection.</p> <p>07.10.2024: Review of Policy. Inclusion of Parking Services function and setting of fixed monetary penalty charges.</p> <p>4.12.2024 – Policy reviewed and approved by Full Council</p>			
DATE LAST REVIEWED BY COUNCIL		DATE OF NEXT REVIEW BY COUNCIL	

## **1.0 INTRODUCTION**

### **1.1 The local authority's approach to compliance and enforcement activities**

- 1.1.1 This Policy sets out the Public Protection Services (hereon referred to as the Service) approach to compliance and enforcement activities. The Services include Environmental Health, Community Safety, Trading Standards, and Licensing and Parking Services. The Service has extensive regulatory functions, dealing with matters as diverse as animal health and welfare, health and safety, private sector housing enforcement, pollution and pest control, dog impounding services, public health nuisances, food and feed safety, communicable disease control, licensing, community safety, product safety, weights and measures and fair trading.
- 1.1.2 The Policy applies to all Services but addresses requirements within the Food Standard Agency Codes of Practice for the delivery of Official Controls of Food and Feed and guidance issued by the Health and Safety Executive.
- 1.1.3 The enforcement policy will be readily available to the public and businesses in the Authority's area.
- 1.1.4 The Service continue to welcome feedback, particularly responses from affected persons. We will endeavour to include suggested improvements in future revisions where possible.

### **1.2 Principles of Good Regulation**

- 1.2.1 Part 2 of the [Legislative and Regulatory Reform Act 2006](#) requires Merthyr Tydfil County Borough Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function<sup>1</sup>. For local authorities, the specified functions include those conducted by environmental health, trading standards and licensing services.
- 1.2.2 Officers will exercise our regulatory activities in a way which is:
- (i) Proportionate - our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
  - (ii) Accountable - our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
  - (iii) 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,

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<sup>1</sup> Specified by the [Legislative and Regulatory Reform \(Regulatory Functions\) Order 2007](#)

Approved by Council	Version: 4	Page 2 of 28
Date:		

- (iv) Transparent - we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted - we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

### **1.3 Regulators Code (Better Regulation Delivery Office 2014)**

- 1.3.1 Merthyr Tydfil County Borough Council has had regard to the Regulators Code in the preparation of this policy. In certain instances we may conclude that a provision in the 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, based on material evidence and documented.

### **1.4 Enforcement Concordat (Cabinet Office, 1998)**

- 1.4.1 Merthyr Tydfil County Borough Council has adopted the Enforcement Concordat and the Principles of Good Enforcement: Standards; Openness; Helpfulness; Complaints; Proportionality and Consistency.

### **1.5 Human Rights Act 1998**

- 1.5.1 Merthyr Tydfil County Borough Council is a public authority for the purposes of the Human Rights Act 1998. The Service therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. Due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

### **1.6 Data Protection Act 1998 and the General Data Protection Regulations 2018**

- 1.6.1 Where there is a need for Merthyr Tydfil County Borough Council to share enforcement information with other agencies, the Service will follow the provisions of the Data Protection Act 1998 and the General Data Protection Regulations 2018

### **1.7 The Code for Crown Prosecutors**

- 1.7.1 When deciding whether to prosecute Merthyr Tydfil County Borough Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.
- 1.7.2 The Code gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions. The Code is issued primarily for prosecutors in the CPS but other prosecutors follow the Code.
- 1.7.3 Prosecutors must only start or continue a prosecution when the case has passed both stages of the Full Code Test. The Full Code Test has two stages:

Approved by Council	Version: 4	Page 3 of 28
Date:		

- (i) The evidential stage - Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- (ii) The public interest stage - In every case where there is sufficient evidence to justify a prosecution or to offer an out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest. It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution

1.7.4 Merthyr Tydfil County Borough Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The enforcement options available to us are in Appendix A.

## **1.8 Food and Feed Law Codes of Practice**

1.8.1 Merthyr Tydfil County Borough Council has responsibility for enforcement of food and feed legislation and carries out its food and feed enforcement activities with regard to the provisions of the Food Standards Agency [Food Law Code of Practice \(Wales\)](#) and [Feed Law Code of Practice \(Wales\)](#).

1.8.2 This Policy satisfies the requirements within The Food Law Code of Practice to produce a Food Law Enforcement Policy and this Policy satisfies the requirement within The Feed Law Code of Practice to produce a Feed Law Enforcement Policy.

## **1.9 Standard for Health and Safety Enforcing Authorities**

1.9.1 Merthyr Tydfil County Borough Council has responsibility for enforcement of health and safety legislation and conducts its health and safety enforcement activities with regard to the guidance issued under section 18 of the Health and Safety at Work etc Act 1974.

## **1.10 Regulatory Enforcement and Sanctions Act 2008 (the RES Act')**

1.10.1 The [Regulatory Enforcement and Sanctions Act 2008](#) established the Local Better Regulation Office (LBRO), now the Department for Business, Energy and Industrial Strategy (BEIS), which produces guidance for local authority regulatory services. The Regeneration and The Service is committed to following guidance produced by BEIS and will have regard to any list of enforcement priorities published by BEIS.

Approved by Council	Version: 4	Page 4 of 28
Date:		

1.10.2 The Act also established the Primary Authority scheme. The Service will comply with the requirements of the 2008 Act when we are considering taking enforcement action against any business or organisation that has a registered Primary Authority partnership.

## **1.11 Copies of the Policy**

1.11.1 Copies of this Policy are available on the website or can be obtained by writing to the Head of Service, Public Protection, Merthyr Tydfil County Borough Council, Civic Centre, Castle Street, Merthyr Tydfil CF47 8AN.

## **1.12 Accessibility statement**

1.12.1 The Services are delivered from the Civic Centre, Castle Street, Merthyr Tydfil, CF47 8AN. Telephone number 01685 725000 or e-mail [customer.care@merthyr.gov.uk](mailto:customer.care@merthyr.gov.uk). A location map to the Civic Centre can be accessed [here](#).

## **2.0 OUR AIMS**

### **2.1 The local authority's regulatory function.**

2.1.1 The services within Public Protection aim to promote the health, safety, social and economic wellbeing of the public and improve environmental conditions by regulation, information, licensing, advice and action. They also aim to assist legitimate businesses in meeting their legal obligations within a fair, competitive market place.

2.1.2 The services within Public Protection will consider the regulatory impact that our actions have on economic progress, including cost, effectiveness and perceptions of fairness of regulation. The service will refer to relevant statutory guidance when considering appropriate enforcement action.

2.1.3 The services within Public Protection will consider the impact that their regulatory interventions may have on smaller regulated entities, using reasonable endeavours to ensure that the burdens of such interventions fall fairly and proportionately, by considering the size of the regulated entity and the nature of their activities.

### **2.2 Advice and Guidance**

2.2.1 The Service will provide general information, advice and guidance to make it easier for business to understand and meet their legal obligations and we will provide it in clear, concise and accessible language.

2.2.2 When offering compliance advice we will distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice will be confirmed in writing, if requested. Businesses may seek advice from us without directly triggering an enforcement action. Ultimate responsibility for ensuring compliance with legislation rests with the individual, business or company.

Approved by Council	Version: 4	Page 5 of 28
Date:		

- 2.2.3 The Services within Public Protection will ensure that inspections and other visits occur in accordance with a risk assessment methodology, except where visits are requested by business or where we act on relevant intelligence or complaints. However the Services within Public Protection may use a small element of random inspection in our programme. The Services within Public Protection will focus our greatest inspection efforts on businesses where our risk assessment shows that a compliance breach would pose a serious risk to regulatory outcome and there is a high likelihood of non-compliance by business. When visiting/inspecting regulated entities officers will give positive feedback to encourage and reinforce good practices.
- 2.2.4 The Services within Public Protection will encourage people to comply with the law with the above interests in mind and when these are undermined and there are legal powers to act, we will use them. The use of these legal powers is termed 'enforcement' and this includes a graduated approach ranging from education and advice (helping our customers get things right in the first place), through serving of notices requiring people to carry out certain actions, to prosecution which could result in fines, imprisonment and other penalties.
- 2.2.5 When considering formal action we will, where appropriate, discuss the circumstances with those suspected of the breach and take these into account when deciding on the best approach. However this will not apply where 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. The Services within Public Protection will deal firmly with those that deliberately or persistently fail to comply.
- 2.2.6 The Services within Public Protection will ensure that our enforcement actions and policies are consistent with the principles set out in the Macrory Review Our enforcement actions will:
- Aim to change the behaviour of the offender and deter future non-compliance.
  - Aim to eliminate any financial gain or benefit from non-compliance.
  - Consider what is appropriate to the nature of the offence and the harm caused.
  - Be proportionate to the nature of the offence, the harm caused and the size of the business entity.
  - Aim to restore the harm caused by regulatory non-compliance, where appropriate.

## **2.3 Current Service Delivery Plans**

- 2.3.1 A Food Safety Service Delivery Plan is approved by Council for each financial year.
- 2.3.2 Key Performance Indicators indicating their contribution to the Authority's Well Being objectives are contained within Strategy on a Page (SOAPs).

Approved by Council	Version: 4	Page 6 of 28
Date:		

### 3.0 WHAT IS THE POLICY FOR?

Approved by Council	Version: 4	Page 7 of 28
Date:		

### **3.1.1 Those affected by our activities:**

3.1.2 This Policy is intended to establish a uniform approach to enforcement throughout the service areas covered, without placing an unnecessary burden on local businesses, organisations, consumers and the public. The Services within Public Protection intend to apply our legal powers consistently and fairly, whatever the circumstances. This Policy sets out our approach for those affected by our enforcement activities as well as for Officers of the relevant services who will abide by the policy.

3.1.3 The Policy aims to set out our approach to enforcement action. The Services within Public Protection will aim to:

- To ensure we enforce the law in a fair and consistent manner.
- To assist and advise business and others in meeting their legal obligations.
- To focus on prevention rather than cure
- To take firm action against those that irresponsibly, deliberately or persistently fail to comply with their legislative responsibilities.
- To support economic progress
- Is in accordance with relevant Codes of Practice and other statutory guidance.

3.1.4 The Services within Public Protection will also make sure all enforcement activities are:

- Managed efficiently.
- Taken promptly and without unnecessary delay.
- Undertaken consistently by all service areas within Public Protection.
- Undertaken in a fair and transparent manner.
- Not influenced by an individual's ethnic origin, sex, age, marital status, sexual orientation, disability, gender reassignment, religious beliefs or non-belief, language, nationality, responsibility for any dependents or any other reason which cannot be shown to be justified.
- Targeted according to risk and having regard to the WG National Enforcement Priorities for Wales.

## **4.0 WHEN DOES THE POLICY APPLY?**

4.1.1 This policy applies to authorised officers within Public Protection that have a responsibility for conducting law enforcement functions.

4.1.2 The Head of Service for Public Protection together with relevant Service Managers has primary responsibility for the implementation of this policy.

4.1.3 It applies to the Services within Public Protections outlined in paragraph 1.1.1 above.

4.1.4 Authorised officers of the authority shall abide by this policy and any deviations must

Approved by Council	Version: 4	Page 8 of 28
Date:		



be justifiable and recorded.

## **5.0 COMPLIANCE AND ENFORCEMENT**

### **5.1 The local authority's approach to compliance and enforcement**

- 5.1.1 The authority will ensure that the allocation of our efforts and resources is targeted where they would be most effective by assessing the risks to our outcomes. Such risk assessments will inform our approach to regulatory activity including data collection, inspection programmes, business advice, enforcement and sanctions.
- 5.1.2 Risk assessment will take into consideration the potential impact of and the likelihood of non-compliance. The Services within Public Protection will make use of any risk assessment methodology schemes that are devised and approved by Government Departments for our specific service areas.
- 5.1.3 The Services within Public Protection will have regard to published inspection plans for businesses that are a Primary Authority partnership when conducting our programmed activity at the business.

### **5.2 Concordat on 'Good Enforcement'**

- 5.2.1 The Merthyr Tydfil County Borough Council has formally adopted the central and local government Concordat on 'Good Enforcement' and will abide by its principles. Consideration will also be given to any additional guidance or codes of practice on enforcement that are relevant to the services. The following principles will also be adhered to:

### **5.3 Openness**

- 5.3.1 The Services within Public Protection will provide information and advice in plain language and in other languages and formats on request, on the rules that apply, and will distribute this as widely as possible. We will be open about how we set about our work including any charges we set. We will discuss general issues, specific compliance failures or difficulties in complying with the law, we will respond to enquiries and visit individuals when requested. In certain circumstances we will take steps to raise awareness and increase compliance levels by publicising unlawful business practices or criminal activity and, where appropriate, we will publicise the results of specific court cases and other formal actions.

### **5.4 Helpfulness**

- 5.4.1 The Services within Public Protection believes that 'prevention is better than cure' and that our role involves actively working with business and individuals to advise on compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and will encourage businesses and individuals to seek advice and information from us. Applications for licences, registrations, and approval of establishments etc will be dealt with efficiently and promptly. The Services within

Approved by Council	Version: 4	Page 9 of 28
Date:		

Public Protection will ensure that wherever practicable, our enforcement activities are effectively co-ordinated to minimise unnecessary overlaps and time delays.

- 5.4.2 Officers are encouraged to promote compliance with the law by raising awareness of relevant standards and legal requirements by means of press statements, distributing leaflets and face-to-face contact.

## **5.5 Proportionality**

- 5.5.1 The Services within Public Protection will minimise the costs of compliance for business by ensuring that any action we require or take is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the business or persons involved when considering action.

## **5.6 Consistency**

- 5.6.1 We will perform our duties in a fair, equitable and consistent manner. Where Officers are expected to exercise judgement in individual cases, we will have arrangements in place to ensure consistency, including effective arrangements for liaison with other authorities and enforcement bodies. This will be achieved through staff development training and where appropriate the use of written procedures and protocols.

## **5.7 Scheme of Delegation**

- 5.7.1 The authority's Constitution contains a Scheme of Delegation that outlines how the Council discharges its functions.

## **5.8 Shared Enforcement Role**

- 5.8.1 There are situations where the local authority shares or has a complimentary enforcement role with other agencies, e.g., Police, Health and Safety Executive. In such situations officers shall have due regard to the Data Protection Act 1998, The General Data Protection Regulations 2018 and any Information Sharing Protocols, Codes of Practice or Memoranda of Understanding that exist in seeking to co-operate with those agencies.
- 5.8.2 On occasion, it will be more appropriate for other agencies or other Local Authorities to deal with breaches of legislation. In performing shared duties, the Services within Public Protection will still comply with this Policy, but the other agencies will maintain the right to take any action they consider to be necessary.
- 5.8.3 If an offender commits an offence in a number of Local Authority areas, it may be more appropriate for one Council to take a prosecution for all the offences, including ones that took place outside of its area. In such circumstances Merthyr Tydfil County Borough Council may enter into legal agreements with other councils for one authority to take the lead role, making use of the provisions under Section 19 of the Local Government Act 2000, Section 101 and 222 of the Local Government Act 1972 or any other enabling powers.

Approved by Council	Version: 4	Page 10 of 28
Date:		

- 5.8.4 Where the Council has an interest in a premise 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. The Food and Feed Law Codes of Practice require that Food and Feed authorities and their authorised officers are impartial and free from any conflict of interest. Furthermore, it will ensure that the attention received is in accordance with the criteria applied to other duty holders.
- 5.8.5 Officers will inspect premises where the local authority is the proprietor in accordance with the risk-rating scheme which determines the frequency of inspection. Following the inspection an inspection report indicating statutory contraventions and recommendations will be submitted to relevant Service Manager, Head of Service and the relevant Director.
- 5.8.6 The inspecting officer will follow up the report to ensure any necessary improvements are undertaken as would be the case for any other business.
- 5.8.7 In the event of a failure to address the contraventions identified within a reasonable period the matter will be escalated and brought to the attention of the Chief Executive.
- 5.8.8 Where a complaint is received about an activity of the authority that may breach legislation enforced by the Services within Public Protection, officers may carry out an investigation. Following the investigation a report indicating statutory contraventions and recommendations will be submitted to relevant Operational Manager, Head of Service and relevant Director.
- 5.8.9 In the event of a failure to address the contraventions identified within a reasonable period the matter will be escalated and brought to the attention of the Chief Executive

## **5.9 Equality and Diversity**

- 5.9.1 When dealing with enforcement proceedings and decisions, the Council will take all reasonable and practical steps to prevent and eliminate unlawful discrimination and encourage good relations between all parties, treating all those involved with equal respect, both when corresponding with those individuals and organisations and during any enforcement proceedings.
- 5.9.2 This will be done irrespective of the individual's ethnic origin, sex, age, marital status, sexual orientation, disability, gender reassignment, religious beliefs or non-belief, language, nationality, responsibility for any dependents or any other reason which cannot be shown to be justified.
- 5.9.3 When dealing with juveniles or persons who are vulnerable, whether due to learning difficulties, mental illness or in some other way, due regard will be taken of their vulnerability and of any current Codes of Practice whether statutory or not, to ensure these persons are treated fairly.
- 5.9.4 Advice, support and policies on equality and diversity can be found on [Merthyr Tydfil](#)

Approved by Council	Version: 4	Page 11 of 28
Date:		

[County Borough Council website.](#)

5.9.5 Any enforcement action may be publicised through press releases.

## **6.0 ADVISING ON THE RULES**

### **6.1 The local authority's approach to proactive advice and education**

6.1.1 See [Section 2.2](#) above.

6.1.2 The Services within Public Protection will ensure that 'risk assessment precedes and informs all aspects of our approach to regulatory activity, including advice and support programmes.'

6.1.3 The Services within Public Protection will provide general information, advice and guidance to make it easier for regulated entities to understand and meet their regulatory obligations.

6.1.4 The Services within Public Protection will provide appropriate means to ensure that regulated entities can reasonably seek and access advice from us without directly triggering an enforcement action. In responding to such an approach, we will seek primarily to provide the advice and guidance necessary to help ensure compliance.

6.1.5 The Services within Public Protection will actively working with business, especially small and medium sized businesses, to advise and assist with compliance.

6.1.6 Our guidance on regulation will be:

- Based on a good understanding of users.
- 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 (ie. no use of legal disclaimers of liability).
- Issued in good time.
- Easy to access.
- Reviewed and improved.

6.1.7 The Services within Public Protection will have regard to published inspection plans for businesses that are a Primary Authority partnership when conducting our programmed activity at the business. We will consider entering a Primary Authority relationship with relevant businesses based in the local authority area.

6.1.8 The Services within Public Protection will respond to requests for business advice within set deadlines.

6.1.9 Where advice is provided to a Primary Authority business the Services within Public Protection may charge a fee as indicated within the agreement.

Approved by Council	Version: 4	Page 12 of 28
Date:		

## **6.2 Advice as a response to breaches**

- 6.2.1 When offering compliance advice the Services within Public Protection will distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice will be confirmed in writing, if requested.
- 6.2.2 The Services within Public Protection will stand by advice that is provided to those it regulates and will respect advice that has been provided by other regulators and enforcement agencies.
- 6.2.3 Those regulated by the local authority can request advice on non-compliance without directly triggering enforcement action.

## **7.0 CHECKING COMPLIANCE**

### **7.1 Our approach to risk-based checks on compliance (including inspections and other visits, samples, test purchases etc.)**

- 7.1.1 We will ensure that risk assessment precedes and informs all aspects of their approaches to regulatory activity, including inspection programmes.
- 7.1.2 The Services within Public Protection will use only a small element of random inspection in their programme to assess their risk methodologies or the effectiveness of our interventions.
- 7.1.3 The Services within Public Protection will focus their greatest inspection effort on regulated entities where risk assessment shows that both a compliance breach and breaches pose a serious risk to a regulatory outcome and there is a high likelihood of non-compliance by regulated entities.
- 7.1.4 Officers conducting visits or inspections will give positive feedback to regulated entities 'to encourage and reinforce good practices. Where possible we will also share information about good practices regulated entities and with other regulators.
- 7.1.5 The Services within Public Protection will plan for collaboration where planned inspections of the regulated entity are conducted by two or more inspectors, in order to minimise burdens on the regulated entity, e.g. through joint or co-ordinated inspection or data sharing.
- 7.1.6 The Services within Public Protection will have regard to published inspection plans for businesses that are in a Primary Authority partnership when conducting its risk assessment of the business and its programmed activity at the business.
- 7.1.7 The Services within Public Protection will implement the FSA's Food hygiene intervention rating scheme (Food Law Code of Practice Annex A) which sets out the risk assessment criteria that Food Authorities are required to use to determine food hygiene intervention frequencies at food establishments.

Approved by Council	Version: 4	Page 13 of 28
Date:		

7.1.8 As a Food Authority we will outline our approach to revisits and our use of alternative enforcement strategies and enforcement actions as part of our documented Food Service Plan.

7.1.9 The Services within Public Protection will implement the Health and Safety at Work National Local Authority Enforcement Code. The Code provides advice and direction to LAs on using a risk-based, targeted and proportionate approach to their interventions and enforcement.

7.1.10 The Services within Public Protection will adhere to the FSA's Feed intervention rating scheme (Feed Law Code of Practice Wales) which sets out the risk assessment criteria that Feed Authorities are required to use to determine feed hygiene intervention frequencies at feed establishments.

7.1.11 The Services within Public Protection will be intelligence led on Animal Welfare.

7.1.12 The Services within Public Protection will be intelligence led when tasking resources for the Trading Standards Service.

7.1.13 Other visits are made on the following basis:

- In response to intelligence received and/or consumer/business complaints.
- Test purchasing is undertaken and developed to address the business profile of the authority; to respond to customer complaints and our intelligence networks; to respond to community concerns and/or other government departments and as a result of collaborative working with other local authorities. We will have regard to Better Regulation Delivery Office Code of Practice on Age Restricted Products.
- In response to the processing of licensing applications or complaints about licensed premises or those that may require licensing.

## **7.2 Complaints of non-compliance**

7.2.1 All complaints received are assessed by Authorised Officers to determine if any investigation and/or intervention are required. Risk schemes may also be used to determine whether individual complaints require investigation.

7.2.2 Revisits will take place to ensure that non-compliances that were dealt with by advice have been rectified based on the seriousness or otherwise of the non-compliance.

7.2.3 Businesses that fail to comply with significant statutory requirements must be subject to appropriate enforcement action and revisit inspection(s).

Approved by Council	Version: 4	Page 14 of 28
Date:		

## **8.0 RESPONDING TO BREACHES OF THE RULES**

### **8.1 The factors that influence the local authority's response to breaches**

- 8.1.1 The Services within Public Protection will ensure that risk assessment precedes and informs all aspects of their approaches to regulatory activity, including enforcement and sanctions.
- 8.1.2 Where appropriate, officers will discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach.
- 8.1.3 The Services within Public Protection will ensure that: clear reasons for any formal enforcement action are given to the person or entity against which action is being taken at the time the action is taken. These reasons should be confirmed in writing at the earliest opportunity. We will ensure that complaints and relevant appeals procedures for redress should also be explained at the same time.
- 8.1.4 The Services within Public Protection will encourage our officers to enter early dialogue between enforcing authorities and primary authorities in relation to possible non-compliance by a business that is in a registered partnership. Officers will discuss any possible non-compliance with the primary authority when considering specified enforcement action and also set out the circumstances in which possible non-compliance should be discussed with the primary authority when specified enforcement action is not being considered.
- 8.1.5 The Services within Public Protection will adhere to the detailed provisions around the statutory notification process that applies when specified enforcement action is proposed against a business that is in a registered primary authority partnership.
- 8.1.6 The Services within and Public Protection are committed to minimising the costs of compliance for business by ensuring that any action taken is proportionate to the risks. As far as the law allows, officers will take account of the circumstances of the case and the attitude of the operator when considering action.
- 8.1.7 Officers will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.
- 8.1.8 In relation to communications with alleged offenders, the Services within Public Protection will ensure:
- Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what timescale and making sure that legal requirements are clearly distinguished from best practice advice.

Approved by Council	Version: 4	Page 15 of 28
Date:		

- Where immediate action is considered necessary, an explanation will be given at the time and if requested confirmed in writing.
- Where there are rights of appeal advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.
- Authorised officers will consider the full range of enforcement actions, including education, advice, sampling, detaining, seizure, serving notices and prosecution.
- Except where circumstances indicate a significant risk officers should operate a graduated and educative approach (the hierarchy of enforcement) and only move to formal action where the informal action does not achieve the desired effect.

## **9.0 CONDUCT OF INVESTIGATIONS**

9.1.1 All investigations will be conducted under the following legislation and in accordance with any associated guidance or codes of practice, as far as they relate to Merthyr Tydfil:

- The [Police and Criminal Evidence Act 1984](#)
- The [Criminal Procedure and Investigations Act 1996](#)
- 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.

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

9.1.3 Our authorised officers will also comply with the requirements of the legislation under which they are acting, and with any associated guidance or codes of practice.

## **10.0 EXPLANATION OF THE PROCESSES FOR INVESTIGATING ALLEGED BREACHES**

10.1.1 Where appropriate authorised officers within Public Protection can exercise the following powers. Examples include but are not limited to:

- Powers of entry - at all reasonable hours inspect any goods and enter any premises other than premises used only as a dwelling.
- Power to enter premises with a warrant - normally relates to private dwellings but can include business premises.
- Where there is reasonable cause to suspect a breach requires any trader to produce any documents relating to his business and may take copies of, or of any entry in, any such document.
- Where there is reasonable cause to believe that a breach has been committed, they may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the breach has been committed.
- May seize and detain goods or documents which they have reason to believe may be required as evidence in proceedings.

Approved by Council	Version: 4	Page 16 of 28
Date:		



- Require any person who has authority to do so to break open any container or open any vending machine or they can open or break open any such container or open any vending machine where a requirement made in relation to the container or vending machine has not been complied with.
- Officers entering any premises may take with them such other persons and such equipment as may appear to him to be necessary.
- Inspection, testing, test purchasing and sampling conferred upon officers by various enactments for which they are authorised for including the issuing of fixed penalty notices.
- Serve Notices, Improvement Notices, Emergency Prohibition Notices including the closure of premises.
- Deal with any article or substance which is a potential cause of danger of serious personal injury under the following legislation:
  - a) Food Safety Act Section 9; and
  - b) Health and Safety at Work Act 1974 Section 25.
- Service of statutory notices in respect of:
  - a) Blocked sewers under Local Government (Miscellaneous Provisions) Act 1976, Section 35(1).
  - b) Stopped up drains, private sewers, water closets, waste pipes or soil pipes under Public Health Act 1961, Section 17(3).
- Notice of Intention to Remove Abandoned Vehicles under the Refuse Disposal (Amenity) Act 1978
- The service of abatement notices under the Environmental Protection Act, Section 80 and Section 80A, in respect of statutory nuisances arising from:
  - a) noise emitted, or considered likely to be emitted, from premises to be prejudicial to health or a nuisance; or
  - b) noise that is prejudicial to health or a nuisance and is emitted from or caused by or is considered likely to be emitted from or caused by, a vehicle, machinery or equipment in a street.
- Granting, issuing, amending, suspending, revoking or refusing the grant or renewal of licences/registrations.
- Use of powers within the Proceeds of Crime Act 2002 for confiscation proceedings.

## **10.2 Details of obstruction offences.**

10.2.1 Under certain legislation any person that intentionally obstructs officers or intentionally fails to comply with a request properly made by an officer acting in pursuance of that legislation or without reasonable cause fails to give officers assistance or information which is reasonably required of him can be guilty of an offence. Obstruction offences are likely to lead to prosecution.

## **10.3 Processes used when seizing items during an investigation.**

10.3.1 An officer seizing any goods or documents in exercise of his powers will:

- a) inform the person from whom they are seized; and
- b) where goods are seized from a vending machine, inform -

Approved by Council	Version: 4	Page 17 of 28
Date:		

- (i) the person whose name and address are stated on the machine as being the proprietor's; or
- (ii) if there is no such name or address stated on the machine the occupier of the premises on which the machine stands or to which it is affixed, that the goods or documents have been so seized.

#### **10.4 Possibility of arrest**

10.4.1 Where deemed necessary for the effective investigation of offences officers may seek the assistance of the Police to arrest individuals they are dealing with.

#### **10.5 Details of interview procedures**

10.5.1 Suspects will be given the opportunity to provide explanations to alleged offences officers are investigating by the means of a recorded interview. The interview will be conducted in accordance with the Police and Criminal Evidence Act 1984.

#### **10.6 Statutory time limits for investigations**

10.6.1 Certain legislation imposes time limits for proceedings to be instigated. No proceedings can be taken after the expiration of a time limit. Generally the more serious the offence the longer the time limit. Time limits can range from 3 months to no time limit for the most serious offences. Investigations will be conducted without undue delay.

10.6.2 Most of the offences Public Protection deal with have a time limit of 3 years from the date of the commission of the offence or the end of the period of one year beginning with the date of discovery of the offence by the prosecutor, whichever is earlier.

#### **10.7 Case reviews**

10.7.1 Authorised officers will comply with the requirements of the legislation under which they are acting, and with any associated guidance or codes of practice and will keep alleged offenders, complainants and witnesses informed of the progress of investigations. Senior Managers will review cases periodically to monitor progress. Investigating officers will make a recommendation on suitable outcomes to the Service Manager who in consultation with Legal Services will make the final decision.

10.7.2 The Services within Public Protection will be transparent in the way in which we apply and determine penalties and avoid perverse incentives that might influence the choice of sanctioning response. The Services within Public Protection will justify our choice of enforcement actions to interested parties.

10.7.3 The Services within Public Protection will ensure that enforcement decisions are taken in accordance with our enforcement policy and have arrangements in place to monitor and review decisions that have departed from normal procedure. We will monitor and review enforcement decisions to ensure consistency within the enforcing authority.

Approved by Council	Version: 4	Page 18 of 28
Date:		

- 10.7.4 The Services within Public Protection will ensure that our officers interpret and apply legal requirements and enforcement policies consistently and fairly.
- 10.7.5 The Services within Public Protection will have regard to any appropriate enforcement models (e.g., the HSE's Enforcement Management Model) to ensure they are applied consistently to enforcement decisions. The Services within Public Protection will ensure that officers follow relevant guidance and direction before taking enforcement action e.g., Statutory guidance on the use of Anti-Social Behaviour Powers.
- 10.7.6 The Services within Public Protection will not adopt policies where the number of improvement notices served or the number of other legal processes is an indicator of performance.
- 10.7.7 The Services within Public Protection will keep alleged offenders and relevant witnesses informed of the progress of investigations.

## **11.0 DECISIONS ON ENFORCEMENT ACTION**

### **11.1 How decisions are made on enforcement action**

- 11.1.1 The options available to the local authority to deal with non-compliance are contained in [Appendix A](#).
- 11.1.2 Senior Managers will review cases periodically to monitor progress. Investigating officers will make a recommendation on suitable outcomes to their Service Manager who in consultation with Legal Services will make the final decision.
- 11.1.3 The Enterprise Act 2002 requires prior notification to the Competition and Marketing Authority for certain Trading Standards related offences.
- 11.1.4 Primary Authorities will be consulted in relation to inspection plans and, advice provided and any formal enforcement action being considered.
- 11.1.5 Our Legal Services team will monitor and review decisions taken on enforcement action.
- 11.1.6 The Services within Public Protection will provide a timely explanation of any rights to representation or rights to appeal to those facing enforcement actions.

## **12.0 REVIEW OF THIS POLICY**

- 12.1 The Services within Public Protection will continually monitor the content and adherence of our officers to this policy. The Policy will be reviewed every 5 years.

Approved by Council	Version: 4	Page 19 of 28
Date:		

## 13.0 COMMENTS AND COMPLAINTS

- 13.1.1 Any comments or complaints about the application of this Policy should be addressed to the relevant enforcement section. If the matter is not satisfactorily concluded it will be dealt with in accordance with the Merthyr Tydfil County Borough Council [corporate complaints scheme](#).

This Policy is published on the service areas on the Authority [website](#) and in hard copy. Requests for copies in other formats or languages or comments on this policy should be sent to the following Customer Care, Merthyr Tydfil County Borough Council, Civic Centre, Castle Street, Merthyr Tydfil, CF47 8AN.

Approved by Council	Version: 4	Page 20 of 28
Date:		

## APPENDIX A

### **Enforcement Actions available to Merthyr Tydfil County Borough Council in respect of Criminal and Civil breaches.**

A number of enforcement options are available and Officers are authorised to enforce legislation on behalf of the local authority either by Cabinet or Council or through the scheme of delegation within the Constitution. The appropriate option will be determined following careful consideration of the circumstances of each individual case.

#### **Compliance Advice and Support**

Merthyr Tydfil County Borough Council uses 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 re-occurrence. If a similar breach is identified in the future, this letter will be persuasive 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.

Merthyr Tydfil County Borough Council recognises that where a business has entered a Primary Authority Partnership, the primary authority may provide compliance advice and support, and Merthyr Tydfil County Borough Council will take such advice into account when considering the most appropriate enforcement action for it to take. We will discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, Merthyr Tydfil County Borough Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

#### **Voluntary Undertakings**

Merthyr Tydfil County Borough Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Merthyr Tydfil County Borough Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

#### **Voluntary Surrender of Food**

Voluntary procedures to remove food that is not suitable for human consumption from the food chain may be used; either at the instigation of the owner of the food or at the suggestion of the authorised officer when the owner of the food agrees the food is not suitable for human consumption.

Approved by Council	Version: 4	Page 21 of 28
Date:		

The local authority, by agreement, may charge the owner of the food for the destruction and disposal of voluntarily surrendered food. The local authority will usually make an application to the Justice of the Peace for costs associated with the destruction and disposal of seized food.

### **Voluntary Surrender of Feed**

Voluntary procedures for the disposal of feed that is not suitable for consumption by animals intended to enter the food chain may be used, either at the instigation of the owner of the feed or at the suggestion of the authorised officer when the owner of the feed agrees the feed is not suitable for consumption by animals.

If the feed authority does not secure, as part of the voluntary surrender, an agreement by the owner to pay the reasonable expenses of destruction or disposal, then it may have to bear the expenses itself.

### **Statutory (Legal) Notices**

In respect of many breaches Merthyr Tydfil County Borough Council has powers to issue statutory notices. These include: Abatement Notices; Stop Notices', 'Prohibition Notices', Deferred 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 conducting of work in default. This list is not exhaustive.

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.

### **Voluntary Closure of Food Businesses**

Voluntary procedures to remove a health risk condition may be used as an alternative to the service of a Hygiene Emergency Prohibition Notice. This approach could be at the instigation of the food business operator or the authorised officer.

Approved by Council	Version: 4	Page 22 of 28
Date:		

## **Financial penalties - Fixed Penalty Notices, Fixed Penalty Notices for Disorder and Penalty Charge Notices**

Merthyr Tydfil County Borough Council has powers to issue fixed penalty notices or fixed penalty notices for disorder in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. Such notices will only be issued where there is adequate evidence to support a prosecution. If a fixed penalty is not paid, Merthyr Tydfil County Borough Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach Merthyr Tydfil County Borough Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

Merthyr Tydfil County Borough Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at Merthyr Tydfil County Borough Council's discretion. Fixed penalty notices can be used to address incidents of dog fouling, fly tipping, smoking in/on premises, failing to display a valid food hygiene rating sticker. This list is not exhaustive. In some circumstances, where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

Penalty Charge Notices (PCNs) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

The service areas will follow relevant guidance on issuing notices to juveniles, with actions taken being influenced by the offender's age and the circumstances of the offence.

Community Protection Notice (CPN) - A CPN is aimed at preventing unreasonable behaviour that is having a negative impact on the local community's quality of life. Any person aged 16 years or over can be issued with a notice, whether it is an individual or a business, and it will require the behaviour to stop and if necessary identify reasonable steps to be taken to ensure it is not repeated in the future. A letter must be sent prior to the issuing of a CPN outlining the issue and that a CPN is being considered.

Police officers, local authorities and PCSOs can issue CPNs but before doing so they must consider two things; whether the conduct is having a detrimental effect on the community's quality of life and, whether said conduct is considered unreasonable. The individual must be given a written warning beforehand stating that if the behaviour doesn't cease, the notice will be issued.

The notice can be appealed in the Magistrates' Court within 21 days. Failure to comply is an offence and may result in a fine or a fixed penalty notice.

Approved by Council	Version: 4	Page 23 of 28
Date:		

## Remedial Action Notices and Detention Notices

Remedial Action Notices can be served if any of the requirements of the Food Hygiene Regulations are being breached or hampered. The notice may:

- Prohibit the use of any equipment or any part of the establishment.
- Impose conditions upon, or prohibit, any process.
- Allow for the rate of an operation to be reduced or stopped completely.

The officer will also consider whether food at the establishment should be detained for the purposes of examination by means of a Detention Notice.

Detention Notices provide for the detention of any food, including the taking of samples for the purposes of examination.

## Injunctive Actions, Enforcement Orders etc.

In some circumstances Merthyr Tydfil County Borough Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. 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.

Anti-Social Behaviour Injunctions (ASBI) are civil injunctions and do not give the individual a criminal record. ASBIs can tackle a diverse range of anti- social behaviour problems.

Following the conviction of a criminal offence, the Council may apply for the grant of a Criminal Behaviour Order (CBO). The order will either prohibit specified acts or require the offender to participate in specified acts, e.g., attendance at a course to alter behaviour. Before imposing an order the court must be satisfied that the offender has engaged in such behaviour causing harassment/distress and that making the order will encourage the offender to stop said behaviour. Failure to comply is a criminal offence and as such can result in imprisonment and/or a fine.

In circumstances where Food Hygiene legislation is breached the Council may apply to the court for a Food Business Operator (FBO) to be banned from being a FBO.

Failure to comply with a court order constitutes contempt of court, a serious offence which is dealt with by the Police and which may lead to a fine or imprisonment.

Merthyr Tydfil County Borough Council 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, Merthyr Tydfil County Borough Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

Approved by Council	Version: 4	Page 24 of 28
Date:		



## **Enforced Sale Procedure**

Enforced Sale is a power contained in the Law of Property Act 1925 which allows Local Authorities to act as mortgagors in possession and sell a vacant property to retrieve the monies they are owed where they are greater than £500. It is expected that all informal and formal action will have been taken and exhausted by the authority in order to resolve the existence of the empty property and its associated problems and it will only be used as a last resort to discourage owners from failing to maintain their properties.

## **Hygiene Prohibition Order Made Against a Person**

This order prohibits a food business operator from managing any food business or particular type of business. When the food business operator has been convicted of an offence, the authorised officer may feel that it is appropriate to ask the Court to consider making an order in relation to that operator.

## **Hygiene Prohibition Order**

During an inspection of a premise prior to a court hearing for an offence(s) under the food hygiene regulations, the authorised officer may discover that the matter(s) giving rise to the prosecution has either not been removed, or has been removed, but has recurred. If the food business operator is convicted, the court may be asked to consider making a Hygiene Prohibition Order on the premises, process, or equipment, thus ensuring the risk of injury to health is removed.

## **Seizure, Detention and Forfeiture**

Certain legislation enables officers to seize goods, equipment or documents, where they may be required as evidence for possible future court proceedings or to prevent further offences from being committed. When items are seized an appropriate receipt will be given to the person from whom the items are taken. In certain circumstances an application will be made to the Magistrates' Courts for forfeiture of the goods. Forfeiture may be used in conjunction with seizure and/or prosecution, where there is a need to dispose of the goods or equipment to prevent them being used to cause a further problem or to prevent them re – entering the market place.

## **Dealing with batches, lots or consignments**

The decision to seize or detain a batch, lot, or consignment requires careful consideration before a notice is served. The authorised officer will use professional judgment and expert advice, if necessary, to decide whether to detain or seize the whole or part of the batch, lot or consignment.

Approved by Council	Version: 4	Page 25 of 28
Date:		

## **Proceeds of Crime**

Under the Proceeds of Crime Act 2002, officers may seek Confiscation Orders against persons who have been convicted of offences where they have made money from their crimes. The purpose is to recover the financial benefit that the offender has obtained from their crimes and act as an additional deterrent to others. Proceedings only take place after a criminal conviction has been obtained.

Officers may also seek an application under POCA for a restraint order which provides for the freezing of a defendant's assets so they may be used to satisfy a confiscation order. Applications may be made once a criminal investigation has commenced, in advance of proceedings being brought, or at any time thereafter.

## **Refusal/Suspension/Revocation/Review of Licences**

Merthyr Tydfil County Borough Council issues a number of licences and permits. Merthyr Tydfil County Borough Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, Merthyr Tydfil County Borough Council may take previous breaches and enforcement action into account.

## **Penalty Charge Notices**

Officers patrol and enforce marked and/or signed traffic restrictions such as single/double yellow lines, disabled bays, loading bays, etc. Such restrictions are supported by Traffic Regulation Orders (TROs) and Penalty Charges Notices (PCNs) are issued for associated civil parking contraventions. As members of the South Wales Parking Group there is an appeals process when a charge notice has been issued and officers will comply with the compliance and enforcement policy of the South Wales Parking Group.

## **Closure Notices/Community Protection Notices.**

Consideration of appropriate measures to reduce Anti-Social behaviour instances where premises or individuals are consistently causing alarm, nuisance or distress.

This can include closure notices on problematic premises or notices against individuals prohibiting the continuation of certain behaviours.

## **Fixed Monetary Penalties**

Merthyr Tydfil County Borough Council has powers under certain legislation to 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

Approved by Council	Version: 4	Page 26 of 28
Date:		

criminal fines and do not appear on an individual's criminal record. Fixed Monetary Penalties cannot be used in conjunction with any other sanction. We will follow National and Welsh Government guidance on the issuing of FPN's.

Approved by Council	Version: 4	Page 27 of 28
Date:		

## Discretionary Requirements

Merthyr Tydfil County Borough Council 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 Merthyr Tydfil County Borough Council chooses to impose Non-Monetary Discretionary Requirements, it will clearly set out what those steps should be and the period within which they must be completed. A failure to comply with the requirements is likely to result in a financial penalty.

Merthyr Tydfil County Borough Council may use Variable Monetary Penalties and Non-Monetary Discretionary Requirements in combination. We will follow the WLGA Guidance on issuing Variable Monetary Penalties and penalties will be issued on the higher penalty scale.

## Simple Caution

Merthyr Tydfil County Borough Council has the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, Merthyr Tydfil County Borough Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how Merthyr Tydfil County Borough Council and others deal with any similar breaches in the future and may be cited in court if the offender is subsequently prosecuted for a similar offence. 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 the Ministry of Justice Guidance '*Simple Cautions for Adult Offenders*' (April 2015) and other relevant guidance.

## Prosecution

Merthyr Tydfil County Borough Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute Merthyr Tydfil County Borough Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions and guidance within relevant Codes of Practice as well as this Policy.

Prosecution will only be considered where Merthyr Tydfil County Borough Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

Approved by Council	Version: 4	Page 28 of 28
Date:		