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Shropshire Council

**Better Regulation and Enforcement
Policy**

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1.0 Introduction

1.1 The Better Regulation and Enforcement Policy ('the policy') provides guidance to officers, businesses, residents and the general public on the range of options that are available to achieve compliance with all legislation enforced by Shropshire Council. The policy has been agreed by Shropshire Council on xx

1.2 This policy is an overarching policy that applies to all Council services where there are enforcement duties and responsibilities; however, certain services may have additional legislative guidance and considerations that set out specific enforcement requirements in their service areas with relevant policies and guidance developed to run in parallel with this policy.

1.3 We are committed to promoting efficient and effective approaches to regulatory interventions and enforcement without imposing unnecessary burdens. Intelligence-led and targeted regulation is essential to promote fairness, to reduce risk and to protect individuals and communities from harm. Shropshire Council fully recognises that effective regulation needs to be proportionate and flexible to assist people to be healthy, to promote and encourage resilient communities and to support a prosperous economy through maintaining fair competition and engendering public confidence, whilst ensuring the highest level of protection for the public. The Council will therefore adopt a positive, proactive and balanced approach to ensure compliance with regulatory matters.

1.4 The Council has adopted the principles of good enforcement previously contained in the Enforcement Concordat and the current Regulators code April 2014:

<http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file10150.pdf>
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

1.5 For Health and Safety related enforcement matters the Enforcement Management Model will be used as a framework, where appropriate, and the Health and Safety Executive's Enforcement Policy Statement is also taken into account:

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

1.6 We will retain the discretion to depart from national guidelines and codes where doing so will better meet local priorities, the public interest and specific circumstances.

2.0 Purpose and scope of this policy

2.1 One of the functions of the Council is to act as a regulator and an enforcement body for a broad range of statutory duties and legislative functions. This policy sets out the standards that we will apply across the Council when acting as a regulator and/or

enforcement body and what residents, businesses and consumers can expect from officers and employees of Shropshire Council.

2.2 This policy is to be used by officers when undertaking their duties, roles and/or functions and sets out the approach to be followed when making decisions in respect of Council enforcement activities.

2.3 The Council is committed to ensuring that all authorised officers act in accordance with this policy. Where officers have considered it reasonable and appropriate to deviate from this policy, this will be properly recorded and documented.

2.4 This policy is an overarching policy that applies to all Council Services with enforcement duties and responsibilities and should be read in conjunction with any published service specific enforcement guidance, practice or policy. It outlines the approach Shropshire Council will take when undertaking enforcement and lays down the principals that will be followed when deciding upon and taking action.

2.5 This policy will apply to both criminal and civil enforcement actions undertaken by the Council.

3.0 Principals of good regulation

3.1 Shropshire Council recognises that effective regulation and enforcement are critical to assisting people to be healthy, to promote and encourage resilient communities and to support a prosperous economy across Shropshire. The positive impact of good regulation is significant; however, it is also recognised that poor regulation is a burden on businesses and can also hinder the outcomes that the Council seeks to achieve.

3.2 This policy and the way it is implemented fully considers the need to support legitimate businesses by means of advice, guidance and information in order to provide businesses with the wherewithal to comply with their legal obligations. Our primary aim is to prevent non-compliance rather than be in a position where we have to take enforcement action. We will do this by developing our relationships with local business and responding to their needs by appropriate sign-posting to relevant sources of information and support outside the Council as well as officers providing accurate, pragmatic and robust advice directly to businesses.

3.3 In developing this policy the Council has had full regard to the provisions of the Legislative and Regulatory Reform Act 2006 and the associated Regulators Code that provides a flexible, principles based framework for regulatory delivery that supports and

enables specified regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities.

3.4 This means that the Council will look to target its regulatory activities towards those cases where action is needed in a way which is transparent, accountable, proportionate and consistent. In targeting its regulatory activities, officers will take account of any information/intelligence held, the risk and harm associated with any activity and the vulnerability of any persons affected or the effects on the environment.

3.5 **Being transparent**

3.5.1 We will ensure that those we regulate are able to understand what is expected of them and what they can expect in return. We will ensure that this policy is available for any interested party to consult. This will primarily be achieved through the Council's website. Hard copies and other forms of the policy will be produced on request; this may incur a charge.

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

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

3.6 **Accountability**

3.6.1 Our activities will be open to public scrutiny with clear and accessible policies and fair and efficient complaints procedures.

3.6.2 The Council's corporate complaints and representations procedure sets out how to complain or express dissatisfaction about the services we provide.

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

3.7 **Taking a proportionate response**

3.7.1 Our activities will aim to reflect the level of risk to the public, business, the environment and the seriousness of any behaviour. We will direct enforcement towards matters with the greatest risk in line with all relevant service strategies and Council priorities.

3.7.2 Where there is a shared enforcement role with another body, liaison will take place at an early stage.

3.8 **Consistency**

3.8.1 Shropshire Council will ensure our policies and practices are fully understood and applied by our officers on the ground.

3.8.2 Our advice to those we regulate will be robust and reliable. Officers will consider statutory codes of practice and other relevant 'good practice' guidelines or standards as well as current legislation. We will maintain information and guidance materials in an appropriate format to enable self-help. Where appropriate and practical to do so, officers will highlight forthcoming legal developments and proactively publicise new or emerging issues.

3.9 **Targeted interventions**

3.9.1 Shropshire Council will direct regulation and enforcement activity primarily towards those businesses or individuals whose activities give rise to the most serious risk, where risks are less well controlled or where potential victims are considered vulnerable. Action will be primarily focused on those directly responsible for the risk and establishing who is best placed to control it.

3.9.2 Shropshire Council will prioritise regulatory effort. Factors that will be considered include complaint levels from service users, matters of statutory nuisance, the existence of statutory powers including statutory duties placed on the Council, the nature of potential breaches, the assessment of risk and the vulnerability of any particular individual or group affected.

4.0 Effective regulation

4.1 **Prevention**

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

4.2 **Business intervention**

4.2.1 Many business premises, including Local Authority premises, are risk rated to inform an intervention programme or are visited as a result of an intelligence led approach of targeting premises where a need has been identified.

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

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

4.2.3 The Council recognises that planned pre-arranged visits to businesses including the provision of advice, results in the right person being available and helps bolster voluntary compliance. We will, therefore, make appointments to meet with the right people wherever possible.

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

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

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

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

4.3 **Sampling/test purchasing exercises**

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

4.3.2 Sampling/test purchasing is undertaken in response to enquiries/complaints from service users, as part of planned exercises or because of proactive officer initiative. Planned exercises are determined based on a risk assessment of local, regional and

national statistics and any co-ordinated programmes, concentrating efforts into areas of trade or products to ensure the most effective use of resources.

4.4 Home Authority and Primary Authority Framework

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

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

4.5 Statutory notifications

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

4.6 Intervention/Enforcement in Local Authority establishments

4.6.1 Officers will carry out interventions/enforcement within Local Authority run premises in a manner consistent with any other business.

4.6.2 Any serious breaches of law that may be detected in such establishments will be brought to the attention of the Head of Paid Service as soon as is reasonably practical to agree on the enforcement approach to be taken.

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

5.0 Dealing with non-compliance

5.1 Shropshire Council recognises that the majority of businesses and residents are law abiding and want to engage constructively with regulators. However, it is also recognised that things do go wrong and, in certain circumstances, whilst we aim to achieve compliance through advice, information and/or guidance there will, at times, be a

need for a more prompt or robust form of intervention or enforcement action to achieve the level of compliance required.

5.2 Where it is considered necessary and appropriate, any form of intervention or enforcement by the Council will seek to:

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

5.3 **No further action necessary**

5.3.1 There are circumstances where contraventions of the law may not warrant any action being taken. Consideration will also be given to whether the resultant cost of action outweighs the detrimental impact or severity of the contravention. A decision of no action may also be taken where enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or on medical grounds. In such cases we will advise the offender and any complainant of the reasons for taking no action.

5.4 **Escalating action**

5.4.1 Subject to paragraph 5.5 below, where any contravention identified by the Council requires any form of intervention or enforcement, the Council will consider the most appropriate course of action having taken into account the individual facts of any case. Whilst the Council will seek to secure compliance by using the most appropriate level of action, officers will be able to escalate this in cases where compliance has not been achieved. A decision to escalate will normally only be taken after reasonable efforts to secure compliance have been made.

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

- **Advice, information and assistance** – we will seek to persuade, through negotiation, the adoption of good practice and to increase understanding of the legislation to secure improved levels of compliance. For minor breaches of the law we may give verbal or written, advice. We will clearly identify any

contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. It may also be appropriate to consider making a referral to another Local Authority in line with the Home Authority/Primary Authority principles, or external agencies (for example Police, Environment Agency). Repeated failure to comply could however result in the escalation of enforcement action.

- **Informal warnings** - will be used when there is evidence of non-compliance but the nature of which is not deemed to warrant a more formal approach. The nature of the non-compliance together with the corrective action necessary to put the matter right will be explained in writing together with a deadline for completing the corrective action. The business or person affected will be afforded the opportunity to provide any explanation or comment as appropriate and these will be considered by a senior manager. Where it is considered appropriate a written warning may be issued which will be recorded and can be taken into account should any further legislative breaches be identified.
- **Enforcement action** – will be considered where compliance is not being achieved and where attempts to secure compliance by other means has failed. The Council may choose in such situations to use more robust measures and actions to achieve compliance with any statutory requirements. This can include many different approaches which are outlined in Chapter 6 and which will be utilised in line with any statutory legal procedures, relevant codes of practice and any national professional guidance in particular the Code of Practice for Crown Prosecutors.

5.5 **Circumstances where immediate enforcement action is necessary**

5.5.1 There are circumstances where immediate enforcement action is necessary. We recognise, as do the majority of the business community and local residents, there is no place for those who deliberately act illegally. This would include but is not limited to individuals/traders operating unfairly by targeting the vulnerable, noisy neighbours who constantly play music too loud, environmental crimes, for example littering and dog fouling, or any other illegal activity where individuals are acting with dishonesty or a lack of care or due regard. Therefore, our approach to achieving compliance will require a more direct, immediate and robust approach for residents, individuals or businesses who:

- knowingly operate or act in a fraudulent or unfair way whether or not for gain or competitive advantage;
- target unfair trading activity towards the vulnerable members of our society;
- breach road traffic legislative requirements and contravene parking restrictions;

- undertake activities that pose a serious risk to public health, safety and well-being, community safety, the environment or animal health or welfare;
- commit offences deliberately or negligently or which involve deception, or where there is significant economic detriment and/or
- behave in a manner which is considered antisocial having significant impact on the local community.

6.0 Types of enforcement activity

6.1 There are a large range of potential enforcement options available to the Council to consider utilising to secure compliance with the law and include the following:

6.2 Fixed Penalty Notices (FPN)

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

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

6.3 Penalty Charge Notices (PCN)

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

6.4 **Civil penalties**

6.4.1 A civil penalty is a fine that can be used by an Authority as an alternative to prosecution for certain specified circumstances as specified by legislation. For example, the Housing and Planning Act 2016 introduces civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences.

6.4.2 Where a civil penalty is issued then the Authority may not undertake a criminal prosecution for the same offence. Unlike FPNs, where a civil penalty is not paid the Local Authority will need to undertake to recover the civil penalty as a debt as opposed to commencing a prosecution for the original offence.

6.4.3 The maximum amount for a civil penalty will be determined by the applicable legislation but it is the responsibility of local authorities to determine on a case by case basis how any penalty will be determined. Service areas will be responsible for developing their own internal procedures and policies where they decide to use civil penalties in lieu of criminal prosecutions and how any fee will be determined.

6.4.4 Whether issuing a civil penalty or prosecuting for the offence the same burden of proof will need to be met and accordingly civil penalties must not be issued in lieu of a prosecution where the usual burden of proof has not been met.

6.5 **Administrative penalty**

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

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

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

6.5.4 Where an administrative penalty has not been accepted or a person has withdrawn their agreement to pay, then alternative enforcement action will be considered

in respect of the original breach. Administrative penalties are not recorded as a criminal offence.

6.6 **Formal Notice**

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

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

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

6.7 **Licence Review**

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

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

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

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

6.8 **Forfeiture Proceedings**

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

6.9 **Seizure**

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

6.10 **Injunctive actions, interim orders, enforcement orders, etc.**

6.10.1 In certain circumstances, the 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. Failure to comply with a court order constitutes contempt of court; this is a serious offence that may lead to imprisonment.

6.10.2 Injunctive action includes agreements and formal undertakings to improve compliance, which, if breached, may lead to the obtaining of an injunction in the civil law courts.

6.11 **Simple caution**

6.11.1 A simple caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

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

6.11.3 A record of the caution will be sent to the relevant government body if appropriate, and will be kept on file. If the offender commits a further offence, the caution may influence the Council's decision to take a prosecution. Further, where a person is subsequently convicted of a similar or relevant offence the caution may be cited in court for sentencing purposes and this may influence the severity of any sentence imposed. Simple cautions are an alternative to prosecutions in appropriate cases.

6.11.4 If the caution is not administered, because the offender refuses to accept it, the facts of the case will be reviewed again, without the option of a simple caution, and a decision to prosecute will be the likely result.

6.12 **Prosecution**

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

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

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

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

6.19 **Proceeds of crime applications**

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

7.0 Consideration of legal proceedings

7.1 We will attempt to administer the requirements of legislation by advice and assistance wherever possible. Occasionally, however, it will be necessary to consider instituting legal proceedings. Each case is unique and must be considered on its own facts and merits. However, we apply the same general principles to every case. When deciding whether to prosecute we will have regard to the evidential test in the Code for Crown Prosecutors:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html)

7.2 A decision to prosecute will not be made unless there is sufficient admissible and reliable evidence that an offence has been committed by an identifiable person or legal personality/entity, and unless there is a realistic prospect of a conviction. We will also

consider any lines of defence which are plainly open to or indicated by the accused and to the public interest.

7.3 **The Public interest test**

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

7.3.2 The following considerations are taken from the code and adapted for Shropshire Council. Factors that are less relevant to offences investigated by Shropshire Council are not repeated here; however, these factors will still be considered if they are relevant.

7.4 **Public interest factors in favour of prosecution**

7.4.1 A prosecution is more likely when:

- A conviction is likely to result in a significant sentence or to result in a confiscation or any other order
- There is evidence that the offence was premeditated
- There is evidence that the offence was carried out by two or more people acting together
- The victim of the offence was vulnerable or has been left frightened
- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics
- The risk or nuisance presented to individuals, the public, the trade (including unfair competition between traders), the farming community, animal health & welfare, or the environment is significant or widespread
- The 'defendant' has acted fraudulently/dishonestly, wilfully or negligently, or insufficient steps have been taken to prevent the offence
- The 'defendant' was in a position of authority or trust, or the offence was committed in the presence of, or near to, a child
- The 'defendant's' prior behaviour, previous convictions or cautions are relevant to the present offence
- There are grounds for believing that the alleged offence is likely to be continued or repeated
- The outcome of the prosecution may serve an important, informative purpose, might establish an important legal precedent, might act as a warning to others or would have a significant positive impact on maintaining community confidence
- The defendant committed the offence while under an order of the court

7.5 Public interest factors against prosecution

7.5.1 A prosecution is less likely to be needed if:

- The offence was committed due to a genuine mistake/ misunderstanding (this must be balanced against the seriousness of the offence)
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement
- The 'defendant' has put right the loss or harm that was caused (but 'defendants' cannot avoid prosecution simply because they have offered compensation)
- The 'defendant' has already been made the subject of a sentence, and any further conviction would be unlikely to result in the imposition of an additional sentence or order.
- The 'defendant' is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is real possibility that it may be repeated.

7.6 Death at work

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

8.0 Application of our policy statement

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

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

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

9.0 Review

9.1 This policy will be reviewed periodically or in line with changes in relevant legislation or codes of practice. Any review will take account of any responses received from affected persons and any other relevant comments received.

Date Policy Approved:

Approved by:

Date of Implementation:

Review Date:

DRAFT