

Shared Regulatory Services
Compliance and
Enforcement Policy



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Shared
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Services



Shared Regulatory Service Compliance and Enforcement Policy

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1. Introduction

- 1.1 The Shared Regulatory Service (SRS) administers the Environmental Health, Trading Standards and Licensing functions on behalf of Bridgend County Borough Council, City of Cardiff Council and the Vale of Glamorgan Council. The services provided include food safety, animal health and welfare, health and safety, fair trading, pollution control, and weights and measures. It also has licensing responsibility for a range of matters including alcohol, gambling and taxis.
- 1.2 The SRS is committed to good enforcement practice and the development of this policy is based upon the current legislation, guidance and codes that apply in this context, and in particular the Regulator’s Code.
- 1.3 This policy sets out the approach of the SRS to compliance and enforcement activities, and is intended to establish a consistent approach to enforcement across its various functions, without placing too heavy a burden on local businesses, organisations and the public. This policy has been subject to consultation across a range of stakeholders. However further feedback is always welcomed using the contact details provided below. We will give consideration to the inclusion of any suggested improvements in future revisions.
- 1.4 In adopting this policy, the SRS intends to apply legal powers consistently and fairly, whatever the circumstances. Decisions will not be influenced by the gender, disability, language, ethnicity, religion, political beliefs or sexual preference of the subject, victims or witnesses.
- 1.5 The SRS wants to make it easy for you to receive our information. This policy is published in English and Welsh on our website www.srs.wales, and in hard copy. We are also able to provide the document in alternative formats including audio tape, large print and in community languages. We have access to interpreter services where required. Requests for copies in other formats or other languages should be addressed to:-

Shared Regulatory Services
Vale of Glamorgan Council
Civic Offices
Holton Road
Barry
CF63 4RU
Email:enquiries@srs.wales

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2. Aims of the SRS

2.1 The National Enforcement Priorities for Wales are:

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

2.2 The SRS adopts these priorities as it aims to safeguard the health, safety and economic wellbeing of those who live in, work in or visit the region; while at the same time maintaining a fair and competitive market place where legitimate businesses can thrive.

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

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

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

2.5 The SRS publishes an annual service delivery plan which sets out our performance targets and our main areas of work for the year ahead and how these link in with national and local priorities as well as the corporate priorities of the participant Councils.

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3. What is this policy for?

- 3.1 The purpose of this document is to set out the SRS policy in respect of its compliance and enforcement activities, and to give guidance to those affected by it, in particular businesses, consumers and the public. It does not, however, affect the discretion to take legal proceedings when this is considered to be in the public interest.
- 3.2 The staff of the SRS will adhere to this policy, and this will be subject to regular monitoring as part of the review process set out in section 9 below.

4. When does this policy apply?

4.1 This policy covers broadly the areas of:-

- Animal Health and Welfare
- Food Safety
- Food Standards
- Health and Safety
- Fair Trading
- Licensing
- Product Safety
- Pollution Control
- Housing Safety
- Port Health
- Communicable Disease
- Wales Illegal Money Lending Unit

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

[Annex 1 – Food Safety Enforcement Annex](#)

[Annex 2 – Feed Law Enforcement Annex](#)

[Annex 3 – Health and Safety Enforcement Annex](#)

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

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5. Our approach to compliance and enforcement

5.1 We will ensure that the allocation of resources and effort is targeted where they would be most effective by assessing the risks against our regulatory outcomes. Such risk assessments will inform our approach to regulatory activity including data collection, inspection programmes, business advice and enforcement sanctions. As part of this risk assessment, we will give consideration to the combined effect of the potential impact of non-compliance on regulatory outcomes and the likelihood of that non-compliance.

5.2 The Legislative and Regulatory Reform Act 2006, as amended, requires the SRS to have regard to the Principles of Good Regulation when providing Environmental Health, Trading Standards and Licensing services.

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

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

5.3 The SRS embraces the principles of good enforcement established in the **Regulators' Code** (April 2014), as amended, i.e.,

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

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

- 5.4 The SRS is committed in all aspects of its work to the promotion of equality in accordance with the participant authorities' Equality statements and policies. The Service will seek to adopt best practice in pursuit of that commitment, including in relation to the provision of assistance, information and advice. This policy will contribute to the fairness of decision-making and will seek to ensure that decisions will not be influenced by the gender, disability, language, ethnicity, religion, political beliefs or sexual preference of the subject, victims or witnesses. During the monitoring and review of our practices under this policy we will make sure that our enforcement activity reflects this commitment.
- 5.5 In some areas of our work we have a shared enforcement role with other agencies, some examples being the Health and Safety Executive, National Resources Wales, Her Majesty's Revenue and Customs and the Police. Sometimes it will be more appropriate for other enforcement agencies or other local authorities to deal with particular breaches of legislation, so officers may pass details of offences to other such agencies. In circumstances where a shared or complementary role exists, we will still adhere to this Compliance and Enforcement Policy, but the other agencies will retain the right to take whatever action that they consider is necessary.
- 5.6 When we exchange information on enforcement activities with our partner agencies, we will do so in accordance with any established methods of information sharing and legal requirements, including the Data Protection Act 1998 and the Crime and Disorder Act 1998.

We will work closely with other service areas within the councils, and the appropriate external regulators to ensure that our 'own house is in order' to promote regulatory compliance in all relevant areas, for example food law, and fair trading. For example should an infringement be detected in the case of a serious food safety breach in local authority controlled establishments, the Chief Executive will be notified without delay.

6. Advising on the rules

- 6.1 Advice to business will be provided proactively and also in response to specific requests for guidance. Such advice will be given clearly and in plain language and will be confirmed in writing on request. Legal requirements will be clearly distinguished from best practice, codes of practice, guidance and other advice.
- 6.2 Officers will be encouraged to promote compliance with legal requirements, by raising awareness of relevant standards and legal requirements, by means of media releases, distributing leaflets, face-to-face contact and through business and community partnerships.
- 6.3 In offering advice to businesses, the SRS will act promptly; however, those businesses with which it has a Primary Authority agreement will be given priority when heavy demands are

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placed on limited staff resources. The Primary Authority arrangements of other local authorities will be respected.

6.4 The Service supports the Government's 'golden rules' for guidance on regulation set out in the Code of Practice on Guidance Regulation http://www.fwr.org/WQreg/Appendices/CoP_on_Guidance_on_Regulation.pdf (BIS, 2009), in that it should be:

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

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

7. Checking compliance

7.1 The SRS adopts an intelligence-led approach to ensure that its resources are most effectively targeted. It also utilises a number of risk assessment frameworks across its areas of work to determine the frequency of checks on compliance which includes inspections of and other visits to business premises, taking samples, making of test purchases and so on.

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

7.3 After dealing with issues of non-compliance by way of advice, the Service will follow up to ensure that the areas of concern have been rectified and the business is fully compliant. Where remedial work has been required, an explanation will be given as to why it is required, and over what time-scale it has to be completed.

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8. Responding to Breaches of the Rules

8.1 Overview

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

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

There may be circumstances where it is suspected that an offender has committed offences across a number of local authority areas. It may be more appropriate for another local authority outside of the Shared Service to take enforcement action even when an offence has been committed within the Bridgend County Borough, City of Cardiff or Vale of Glamorgan Council area. Conversely there may be occasion when it would be more appropriate for the Service, (through one of the participant Councils) to take enforcement action in respect of offences that occurred elsewhere. In such circumstances we may enter into a legal agreement for one authority to take the lead role, as appropriate, making use of the provisions of section 19 of the Local Government Act 2000, section 222 of the Local Government Act 1972 or any other enabling provisions.

8.2 Conduct of Investigations

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

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

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

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

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- 8.2.3 Enforcement powers are provided by the legislation under which our officers are authorised, and staff will use these powers when necessary, but always in a proportionate manner. Officers will reasonably expect co-operation during the investigation of alleged contraventions and it can be an offence to obstruct an authorised officer in the course of their duties.
- 8.2.4 Where officers exercise their powers of seizure, the person from whom any goods or documents are seized (or their representative) will be advised of the fact and provided with a receipt. Seized items will be stored securely and in accordance with documented procedures.
- 8.2.5 Offenders are not normally subject to the possibility of arrest under the law enforced by the SRS, however there are some exceptions. These include offences under the Trade Marks Act 1994, and other law, subject to the necessity test of section 24 of the Police and Criminal Evidence Act 1984, for example when the bringing of a case would be hindered by the disappearance of the offender.
- 8.2.6 All investigations will be completed in a timely fashion and having regard to any time limits for bringing formal action prescribed by specific pieces of legislation.
- 8.2.7 Where the Council has an interest in a premises it will carry out its enforcement duties in exactly the same way that it does in other premises in which it does not have an interest. Furthermore, it will ensure that the attention received is in accordance with the criteria applied to other duty holders.

8.3 Communication

- 8.3.1 Our staff will always communicate with any Primary Authority or Home Authority at the earliest possible opportunity in an investigation.
- 8.3.2 Those affected by enforcement action (including witnesses and defendants) will be kept informed of the progress of investigations. This will be done in a clear, appropriate and timely manner. As decisions are made regarding the direction in which an investigation will be concluded, the defendant(s) will receive written confirmation of the intended course of action. This will be provided as soon as practicable, together with information on rights to representation and rights to appeal. There is no right of appeal against the decision to prosecute.
- 8.3.3 The SRS will publish the results of its prosecution cases on its website. Such results may also be drawn to the attention of interested parties.

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8.4 Decisions on Enforcement Action

A range of enforcement outcomes is available to the Service, as detailed below. In the case of the areas of food law enforcement, feed law enforcement and health and safety, a number of additional options are set out in Annexes 1, 2 and 3 to this policy, respectively. The appropriate action will be determined following careful consideration of the circumstances of each individual case.

We will use compliance advice and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be taken into account in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction, but it may be presented in evidence as part of a bad character application.

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

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

8.4.1 Civil Remedies

8.4.1.1 Voluntary Undertakings

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

8.4.1.2 Injunctive Actions

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

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

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8.4.1.3 Civil Sanctions

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

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

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

Fixed Monetary Penalties

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

Discretionary Requirements

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

Variable Monetary Penalties and Non-Monetary Discretionary Requirements may be used in combination.

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

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8.4.2 Criminal Enforcement Actions

8.4.2.1 Statutory Notices

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

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

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

8.4.2.2 Fixed penalty notice and penalty notice for disorder

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

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

8.4.2.3 Confiscation of Assets

Officers may make applications under the Proceeds of Crime Act 2002 for confiscation of assets of offenders in serious cases. The purpose is to recover the financial benefit that the offender has obtained from their crimes. Proceedings only take place after a criminal conviction has been obtained, but they are conducted according to the civil standard of proof. Where appropriate, compensation orders can also be sought from the court.

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8.4.2.4 Enforcement Orders

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

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

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

8.4.2.5 Simple Caution

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

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

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

There is no legal obligation for a person to accept the offer of a simple caution, but failure to accept a caution will normally result in prosecution for the offence.

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

Simple cautions will be used in accordance with the Ministry of Justice guidance on the cautioning of adult offenders, currently - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416068/cautions-guidance-2015.pdf, and other relevant guidance.

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8.4.2.6 Prosecution

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

As with the preceding enforcement options, a number of factors will be taken into consideration including

- The seriousness of the offence
- The previous history of the offender
- Any statutory defence available
- Action taken to avoid recurrence
- Any explanation offered, and if the law allows the circumstances and attitude of the offender
- What course of action will best serve the public interest
- Whether there is a realistic prospect of conviction

The decision as to whether prosecution is the most appropriate course of action in a particular case will be made

- In accordance with this Policy;
- In accordance with the [The Code for Crown Prosecutors](#); and
- In accordance with statutory requirements, taking into consideration all relevant codes of practice, and without any unnecessary delay.

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

Having considered all the relevant facts and circumstances of an individual case, the Head of SRS will recommend a course of action to the relevant local authority.

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- In respect of prosecutions undertaken by Bridgend County Borough Council, the decision to institute proceedings will be made by the Assistant Chief Executive Legal and Regulatory Services
- In respect of prosecutions undertaken by the City of Cardiff Council, the decision to institute proceedings will be made by the Director of Governance
- In respect of prosecutions undertaken by the Vale of Glamorgan Council, the decision to institute proceedings will be made by the Head of Legal Services

In certain circumstances, the Head of SRS may institute legal proceedings in consultation with the officers identified above.

A successful prosecution will result in a criminal record. There is a range of punishments available to the court depending on the charge, and the particular circumstances of a case and the offender. These include a discharge, a fine, a community order, or a prison sentence in serious cases. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits, which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors, and may have consequences for individuals seeking certain types of employment.

8.4.3 Other remedies

8.4.3.1 Works in default

Under certain pieces of legislation, the Service has powers to carry out works in default where a person has been required to do works but has failed to do so. The work in default powers are provided in the legislation being used in relation to a case.

In most circumstances, a person will be given notice of the intention to carry out works in their default. Once work has started, it is an offence for that person to obstruct the Council or any of the contractors that have been employed to carry out the works. The cost of the works will be recovered in accordance with the relevant legislation.

8.4.3.2 Refusal, Suspension or Revocation of Licences

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

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9. Review

- 9.1 This policy will be updated and developed as required by changes in the law and will be reviewed biennially for continued accuracy and adherence to it by staff and reported to the Joint Committee and the respective Overview and Scrutiny Committees.
- 9.2 Data on equality profiles of those affected by this policy will be collated and monitored for any discriminatory practices.

10. Comments and Complaints

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

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

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

- an appeal against a ‘properly made’ decision made by the Council
- a means to seek change to legislation or ‘properly made’ policy decision
- decisions in respect of which there is a separate right of appeal or review, e.g. via a Magistrates Court

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