

Corporate Prosecutions Policy

December 2013



SOUTH RIBBLE BOROUGH COUNCIL

CORPORATE PROSECUTIONS POLICY

1. Introduction

1.1 The decision to prosecute an individual is a serious step. This Policy is designed to ensure that all officers involved in any such decisions understand and appreciate the principles that ought to be taken into account.

1.2 The Policy also deals with the procedural aspects of obtaining the requisite authority to prosecute.

2. General Principles

2.1 Although each case must be considered on its own facts and on its own merits, there are general principles that apply to the way in which prosecutors must approach every case.

2.2 When deciding whether to commence a prosecution officers must be fair, independent and objective. They shall not allow any personal views about ethnic or national origin, disability, age, gender, religion or belief, political views, sexual orientation or gender identity of the suspect, victim or witness to influence their decisions. They shall not be affected by improper or undue pressure from any source.

2.3 The Council shall always act in the interests of justice and not solely for the purpose of obtaining a conviction.

2.4 The Council is a public authority for the purposes of the Human Rights Act 1998. The Council must apply the principles of the European Convention on Human Rights in accordance with the Act. The Council is also a public authority for the purposes of current, relevant equality legislation.

3. The Decision to Prosecute

3.1 In most cases the decision to prosecute will be taken by the relevant Director and/or Head of Service. However, it is imperative that prior to any decision being made to commence a prosecution that there is full consultation with Legal Services. This is to enable Legal Service to advise comprehensively on all legal issues affecting the case.

3.2 All officers involved in the process will be mindful of the time limits for bringing prosecutions. For most summary offences prosecutions must be commenced within six months of the commission of the offence. Examples of summary offences include: - dog fouling prosecutions, littering offences under the Environmental Protection Act 1990, failure to comply with an abatement notice under the Environmental Protection Act 1990, offences relating to the taxi trade under the Local Government (Miscellaneous Provisions) Act 1976, and failure to comply with a breach of condition notice under section 187A of the Town and Country Planning Act 1990.

4.0 The Test to be satisfied

4.1 There are two basic stages to the consideration of whether to commence a prosecution. The first stage is the consideration of the evidence. If the case does not pass the evidential stage it must not go ahead no matter how important or serious it may be. If the evidential test can be satisfied then consideration must then be given as to whether the bringing of a prosecution is in the public interest.

Evidential stage

4.2 The Council must be satisfied that there is enough evidence to provide “a realistic prospect of conviction” against a suspect on each offence. Consideration must be given as to what the defence case may be and how that is likely to affect the prosecution case. “A realistic prospect of conviction” means that a court of law is more likely than not to convict the suspect of the offence charged.

4.3 When deciding whether there is sufficient evidence to prosecute, the Council must consider whether the evidence can be used and is reliable. In this regard the involvement of Legal Services is essential in order to advise on issues such as the admissibility of evidence, the reliability of confession evidence and the credibility of witnesses. Consideration must also be given to the effect on the outcome of the likely defence case and evidence. Again the advice of Legal Services is essential.

Public Interest Test

4.4 Providing the evidential test can be satisfied a prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or if it appears more appropriate in all the circumstances of the case to divert the person from prosecution.

4.5 The Council must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the subject. It is not possible to provide any kind of exhaustive list of factors that may be taken into account.

4.6 Public interest factors that weigh in favour of commencing a prosecution include:-

- A conviction is likely to result in a significant sentence;

- The suspect was in a position of authority or trust and he or she took advantage of this;
- There is evidence that the offence was premeditated;
- The offence was carried out by a group;
- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, gender, age, religion or belief, political views, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- The suspect's previous convictions or cautions are relevant to the present offence;
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;
- The offence, although not serious in itself, is widespread in the area where it was committed;
- A prosecution would have a significant positive impact on maintaining community confidence;
- The offence was committed over a considerable period of time;

4.7 Public interest factors that would weigh against prosecution include:-

- The court is likely to impose a nominal penalty;
- The seriousness and the consequences of the offence can be appropriately dealt with by a caution which the suspect accepts;
- The suspect 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, unless the nature of the particular offence requires a prosecution;
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- The suspect played a minor role in the commission 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;
- There has been a long delay between the offence taking place and the case being brought to court unless the offence is serious or the delay has been caused by the suspect or the offence has only recently come to light or the complexity of the case has meant that there has been a long investigation;
- A prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- The effect of the prosecution or conviction would be unduly harsh given the suspect's personal circumstances. It is not possible to list all the factors that might be relevant but they might include extreme age, or youth, or physical or mental infirmity.
- The availability of appropriate remedial schemes or sanctions that reduce or avoid the need for criminal process (such as fixed penalty notices, or appropriate preventative offender training schemes)
- The suspect has put right the loss or harm that was caused (but suspects must not avoid prosecution or diversion solely because they pay compensation);
- The suspect has voluntarily revealed the offence. However any disclosure would not be voluntary if the admission is not a complete disclosure of the offence or the admission was prompted by the expectation that the offence would be discovered or the suspect admits all the facts as soon as challenged during an interview under caution.

5.0 Selection of Offences

5.1 The involvement of Legal Services is crucial when deciding on precisely what offences to prosecute a suspect for.

5.2 Offences should be selected which:-

- Reflect the seriousness and extent of the wrongdoing;
- Give the court adequate powers to sentence;

- Enable the case to be presented in a clear and simple way;
- Meet the requirements of justice in the case.

5.3 The Council will never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few.

6.0 Formal Cautions

6.1 In appropriate circumstances the Council will consider offering a suspect a formal caution. A formal caution will only be offered in accordance with the Home Office Guidelines.

6.2 The offer of a formal caution will never be considered in circumstances where there is insufficient evidence to justify a prosecution. Further a formal caution will only be offered where the suspect has made a full and frank admission of the offence.

6.3 The decision to offer a formal caution shall be made by the relevant Director and/or Head of Service. Prior to any decision being made there should be full consultation with Legal Services.

7.0 Young Offenders

7.1 The Council will always consider the interest of a youth when deciding whether it is in the public interest to prosecute. However the Council will not avoid prosecuting simply because of the suspect's age. The seriousness of the offence or the youth's past behaviour is very important.

7.2 Ordinarily a prosecution will not be commenced unless the youth has already received a reprimand and final warning. However if the offence is very serious or the youth does not admit the offence then a prosecution may be commenced without a reprimand or final warning being given.

8.0 Role of Legal Services

8.1 It is vital that prior to the decision being made to commence a prosecution that Legal Services are fully consulted with. Legal Services in particular will advise on:

- Whether there is sufficient evidence to bring a prosecution (paying particular attention to the question of whether all evidence would be admissible in a court of law);
- Whether there are public interest arguments against the commencement of a prosecution;
- Assuming that a prosecution can be justified by reference to the two points listed above advising on for what specific offences a suspect should be prosecuted for.

8.2 Whilst conducting prosecutions Legal Services shall keep client departments fully informed of all developments. They shall have responsibility for complying with statutory requirements and shall keep the case under constant review. If new evidence comes to light that calls into question the desirability of continuing with a prosecution Legal Services shall liaise fully with client departments (whenever possible) before making any decision as to whether to continue with the prosecution in question.

9.00 Fixed Penalty Notices

9.1 Officers serving fixed penalty notices are expected to acquaint themselves with the contents of this policy. Such officers must bear in mind that if fixed penalties are not paid then ordinarily a prosecution will ensue; hence it is imperative that the evidence is sufficient to prove the offence prior to issuing a fixed penalty notice. If officers are in doubt about how to proceed they

are encouraged to seek advice from Legal Services.

10.00 Anti-Social Behaviour Orders

- 10.1 Technically speaking an application for an anti-social behaviour order is not a prosecution as such. Nevertheless it is considered prudent to set out some guiding principles here.
- 10.2 Section 1 of Crime and Disorder Act 1998 sets out the relevant provisions. The Council may apply for an anti-social behaviour order against any person aged over 10 years of age.
- 10.3 Prior to making an application for an anti-social behaviour order the Council must be satisfied that:-a the person has acted in a manner that has caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and b that such an order is necessary to protect people in the South Ribble area from further anti-social acts by him.
- 10.4 The decision to apply for an Anti-Social Behaviour Order shall be made by the relevant Director and/or Head of Service. Legal Services should be fully consulted with prior to any decision being made.