



Ashfield

DISTRICT COUNCIL

LEGAL SERVICES PROSECUTION POLICY

Director of Legal and Governance
(Monitoring Officer)

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Audit Committee – **28 March 2022**

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BACKGROUND

The Council has a variety of statutory and regulatory functions for which, within its administrative area, it is the relevant enforcing authority.

This policy sets out broad principles that will guide prosecutions. It also seeks to provide consistent guidelines for making decisions to prosecute. It is not intended to be prescriptive or exhaustive. The Council will exercise its discretion when appropriate, about the extent of involvement or action (as applicable) required, looking at each case individually.

This policy is intended to provide broad guidance to officers involved in the charging decisions and prosecution of regulatory offences. In either case, it enables officers to determine the appropriate course of action to take where criminal activity is involved.

POLICY STATEMENT

Ashfield District Council is committed to the highest possible standards of probity and accountability. It is committed to defending the public purse, and the public at large but subject to consideration of the factors set out in this policy.

The Council adopts a presumption in favour of prosecution against perpetrators of criminal conduct, if there is sufficient evidence to initiate a prosecution and taking such action is in the public interest. The Council will treat each case on its own merits.

The same broad principles apply equally to those matters for which the Council has a statutory or regulatory mandate to protect the interests of the wider public.

SCOPE OF THE POLICY

[Link to Other Local Policies](#)

A number of departments within the Council with statutory, regulatory or other enforcement powers have in place their own enforcement policies that focus on service specific operational considerations. It is not anticipated that the department policies will conflict with this policy, they are expected to complement this policy, providing detailed operational context specific to the enforcement remit of the relevant service(s) to which they relate. In the event, however, that a conflict may arise, clarification should be sought from the Director of Legal and Governance (**Monitoring Officer**).

UNDERTAKING OUR OWN PROSECUTIONS

These arise from statutory or regulatory powers vested in the Council, as enforcing authority for specific statutory or regulatory crime within the administrative area of Ashfield. These powers will either arise by way of a power or a duty to act.

A power provides the Council with discretion over whether or not to investigate the commission of an offence. Whatever decision is arrived at must be capable of objective justification. In practice, this translates into assessing what the most appropriate action and/or sanction should be in the circumstances under consideration. Not every case would therefore result in an investigation, or prosecution.

A duty in the event of breach of regulatory or statutory provisions invariably means that there is no discretion afforded to the Council whether or not to investigate the commission of an offence. Therefore when there is a duty to act the Council must act.

Following an investigation, a two-stage test will be undertaken prior to a decision to prosecute being made. First, an assessment of the available evidence (**“the evidential test”**) to determine whether or not there is enough evidence to secure a realistic prospect of conviction, will be undertaken. This part of the two stage process is a professional assessment and in all cases will be undertaken by officers in Legal Services.

The second part of the test is an assessment of the interests of justice (**“the public interest test”**) i.e. understanding the extent the public interest needs to see that justice is seen to be done. This assessment will typically be undertaken jointly between officers of the Legal Service and relevant case officers from the service area involved in the investigation of the offence.

Only where **both** the evidential and public interest tests are satisfied will a prosecution ever follow. In coming to a decision the Code for Crown Prosecutors will also be applied.

SANCTIONS

There are a range of sanctions to be considered in deciding the action to take in relation to the public interest test. For each of the sanctions identified below, non-exhaustive examples are provided of the sort of considerations that may be taken into account:

Take No Action

The Council may consider taking no action in the following circumstances:

- it is a first offence;
- there was voluntary disclosure by the offender;
- the age of the offender (at the date on which action is being considered);
- there are significant physical, mental or other welfare considerations;
- there has been undue delay between the date of the offence and the date on which a decision on sanction is being made, unless the:
 - seriousness of the offence is significant
 - delay is caused wholly or partly by the offender
 - discovery of the offence is recent
 - investigation of the offence has, out of necessity, been lengthy and complex

The relevant test is determining whether the public interest would be best served by proceeding with a prosecution in the circumstances. Each case is to be determined on its own unique facts.

Issue a Local Authority Caution

The Council may consider issuing a caution in the following circumstances:

- it is a first offence;
- the offence is minor;
- the offence was committed as a result of a genuine mistake or misunderstanding, balanced against the seriousness of the offence;
- there was no planning involved/criminality was opportunistic;
- the offence was admitted during an interview under caution;
- genuine expression of remorse/regret by the offender;
- the public interest merit in prosecution is questionable e.g. there might be social, medical or other welfare factors which ordinarily mitigate against a decision to prosecute;
- the offender has put right the loss or harm caused (but care should be taken to ensure offenders do not avoid prosecution solely because they make recompense).

Although across relevant services, cautions may be administered by **Service Managers and Assistant Directors** or higher, they should only ever be offered where there is prior assessment by Legal Services that there is sufficient evidence available to secure a conviction. This is because where a caution is offered, and the offender refuses to accept the caution, the case must proceed to prosecution.

A service area register of cautions administered by the Council is held by the Director of the appropriate service department.

Prosecution

A decision to prosecute will be made where there is sufficient admissible evidence to provide a realistic prospect of conviction which has been properly obtained and there is a public interest to prosecute.

Other Options

Informal Warnings, cautions or fixed/civil penalties. In appropriate circumstances, these may be suitable methods of disposal following an investigation. The enforcement **policy** of the service area policies will detail which alternative options are available to individual services within the Council. Their application in service specific contexts should not be construed as being inconsistent with this policy.

Appendix A contains a suggested checklist for use in assessing the appropriate sanction in any given case and explains the rationale to be used in assessing whether or not to refer a matter for prosecution. It should be noted that this list is not exhaustive.

LIAISON & COOPERATION WITH OTHER AGENCIES

The Council may liaise with other agencies as necessary (e.g. the Police, Crown Prosecution Service, Social Services) concerning a potential prosecution.

There will be occasions when it is necessary to undertake multi-agency investigations and/or prosecutions because criminal activity or statutory/regulatory breaches cut across the remit of other agencies in addition to the Council. Examples include prosecutions where offences have been committed in neighbouring authorities.

Between the Council service or directorate involved in such initiative and the external organisation, arrangements exist to identify which authority will be the lead within the operation. Where the Council service is the lead, this prosecution policy will apply to the prosecution of offenders resulting from the operation.

MONITORING OF POLICY STATEMENT & GUIDANCE

This policy and guidance will be reviewed every two years by the Director of Legal and Governance (Monitoring Officer).

Appendix A

Procedural Guidance

Introduction

This table below explains the rationale to be used in assessing whether or not to refer a matter for prosecution or, as may be the case, whether or not to prosecute.

Issue	Points to consider	Yes/No ¹
Evidence	Is there sufficient evidence to secure a realistic prospect of conviction	
	Is all the evidence admissible?	
	Has all the evidence been obtained appropriately?	
	Has the evidence been reviewed by Legal Services?	
Degree of criminality	How was the offence committed?	
	Was it opportunist?	
	How much planning went into the offence?	
	Was this a deliberate offence?	
	Was there collusion?	
Persistent offender	Has the offender previously been convicted of a similar or other relevant offence?	
	Has the offender previously committed a similar or other relevant offence, for which they received a sanction (other than conviction following a prosecution)?	
Position of Trust	Is the offender in a position of trust?	
Duration	For how long did the offence continue?	

Voluntary disclosure	How did the offence come to the attention of the Council?	
	Was the offence admitted at the earliest opportunity?	
	Did the offender lie?	
Widespread offence	Is the offence part of a local trend?	
Social/Medical factors	Are there any mitigating personal circumstances?	
	Are there any mental or physical disabilities? (Evidence must be provided by a medical professional)	
	Is the perpetrator fit to stand trial? (Evidence will be required from a medical professional and may ultimately be a question for the court to determine)	
	Would sanction significantly impact on children or other vulnerable person(s)?	
Equality considerations Public Interest	Do the factual circumstances impact on one or more of the equality strands in the Equality Act 2010?	
	What value is there for the Council and/or the general public for a prosecution to proceed?	