

ST ALBANS CITY & DISTRICT COUNCIL CORPORATE PROSECUTION POLICY

1. Introduction

1.1 This Council will prosecute where it is considered expedient in order to promote or protect the inhabitants of the District.

1.2 This document sets out the factors that determine whether or not the Council will pursue criminal prosecution proceedings where evidence exists that an offence has been committed.

1.3 This Policy also sets out possible alternatives to prosecution that may be available to the Council.

1.4 Under the Council's Constitution and Scheme of Delegation contained therein, prosecutions may be authorised in the following ways, depending on the circumstances:

By a resolution of the Council;

By a resolution of the Cabinet or a Committee of the Council acting in accordance with its terms of reference;

By a Head of Service of the Council acting in accordance with the Scheme of Delegation to Officers;

Health and Safety Inspectors duly authorised by the authority from within its Environment and Regulatory Services Department.

1.5 A copy of this policy will be made available on request. Alternatively, the document is available via the Council's website at www.stalbans.gov.uk. Every effort will be made to make the document available in alternative formats to persons with special requirements.

1.6 All queries relating to this Policy should be directed to the Council's Head of Legal and Democratic Services in the first instance.

2. General Principles

2.1 The decision to prosecute rests with the Council and such a decision is a serious step. All authorised Council officers will consider each case on its individual facts and merits in a fair, independent and objective manner.

2.2 All authorised officers must act in accordance with all relevant legislation such as the Police and Criminal Evidence Act 1984, the Criminal Procedure and

Investigations Act 1996, the Crime and Disorder Act 1998, the Data Protection Act 1998, the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000.

2.3 Council officers must also act in accordance with all relevant Council decisions, policies and codes of conduct.

2.4 Council officers must have regard to the Regulator's Compliance Code.

3. When to Prosecute

3.1 The decision on whether or not to prosecute is in two stages: Consideration of evidence and whether or not a prosecution would be in the public interest. The 'public interest' test should only be considered if the 'evidence' test has been satisfied.

The Evidence Stage

3.2 The Head of Legal and Democratic Services must be satisfied that there is a 'realistic prospect of conviction' against each defendant on each charge.

3.3 The test is objective. It means that a court, properly directed in accordance with the law, will be more likely than not to convict the defendant of the charge alleged.

3.4 The following factors should be considered in detecting if there is a realistic prospect of conviction:

What the defence case may be and how that is likely to affect the prosecution case;

Whether the evidence can be used e.g. whether or not it conforms with legal requirements;

Whether the evidence is reliable e.g. confessions, explanations, identifications, witness credibility etc.

The Public Interest Stage

3.5 The public interest must be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. The factors for and against prosecution in an individual case must be considered with care and fairness.

3.6 Determining the public interest does not merely involve totting up the factors for and against prosecution. Each factor must be evaluated to determine the overall assessment. Of course, the factors that apply depend on the individual facts of each case.

3.7 The following non-exhaustive list sets out some common public interest factors in favour of prosecution:

- a) the seriousness of the offence;
- b) a conviction is likely to result in a significant sentence;
- c) evidence of premeditation;
- d) the suspect was/is in a position of trust;
- e) evidence of the use or threat of violence;
- f) evidence of collusion;
- g) the length of time the offence continued for;
- h) the amount of damage/disturbance caused;
- i) evidence that the suspect was a ringleader/organiser of the offence;
- j) the victim was vulnerable, had been put in considerable fear or suffered damage/disturbance;
- k) any relevant previous convictions or cautions of the suspect;
- l) there are grounds to believe that the offence is likely to be continued or repeated;
- m) the suspect is alleged to have committed the offence while under an order of the court;
- n) the offence, although not serious in itself, is widespread in the area it was committed;
- o) a prosecution would have a positive impact on public confidence ;
- p) the offence was motivated by any form of discrimination;
- q) the offence was committed to facilitate more serious offending.

3.8 The following non-exhaustive list sets out some common public interest factors against prosecution;

- a) the court is likely to impose a very small or nominal penalty;
- b) the loss or harm caused was minor and resulted from a single incident, particularly if it was caused by a misjudgement;
- c) the suspect is elderly or juvenile;
- d) the offence was committed due to a genuine mistake or misunderstanding (to be balanced against the seriousness of the offence);

- e) the suspect is suffering from significant physical or mental health problems (although always bear in mind the seriousness of the offence and the possibility of repetition);
- f) there has been a long delay between the offence taking place and the date of trial (unless the offence is serious, it has only just come to light, its complexity warranted a lengthy investigation, or the delay has been caused in part by the suspect, new investigative techniques have been used and as a result a suspect has been identified);
- g) the suspect has put right the loss or harm (but not just to avoid prosecution);
- h) the seriousness and the consequences of offending can adequately be dealt with by an out of court disposal which the suspect accepts and complies with;
- i) the suspect has been subject to any appropriate regulatory proceedings, or any punitive or relevant civil penalty which remains in place or which has been satisfactorily discharged, which adequately addresses the seriousness of the offending and any breach of trust involved;
- j) a prosecution is likely to have an adverse effect on the victims physical or mental health bearing in mind the seriousness of the offence;
- k) the suspect played a minor role in the commission of the offence;
- l) a prosecution may require details to be made public that could harm sources of information.

4. Alternatives to Prosecution

4.1 When deciding whether or not to prosecute, the alternatives to prosecution should be considered. The following alternatives may be relevant:

Simple Caution

4.2 These should only be given if justified in the public interest and regard must be had to Home Office Guidelines Circular 016/2008 on administering simple cautions. To issue a simple caution, there must be sufficient evidence to justify criminal proceedings and the defendant's history of previous convictions must be taken into account. The defendant must admit the offence, signing a document to demonstrate this, and they must also agree to the caution.

4.3 The caution is not a criminal conviction but will be held on records for 5 years and may be cited (for sentencing purposes) as if it were a previous conviction in the event of a further offence.

Administrative Penalty

4.4 This is an appropriate sanction in cases of housing benefit and/or council tax benefit fraud.

4.5 There must be sufficient evidence to justify criminal proceedings. The person interviewed does not have to admit the offence at an Interview Under Caution and will be given the opportunity to accept an Administrative Penalty instead of the commencement of criminal proceedings against them. The Penalty is calculated at 30% of the benefit overpayment. This will be in addition to the overpayment of benefit, which is also recoverable by the Council.

4.6 The Penalty will be held on record for 5 years and may influence a decision to prosecute should a further offence be committed, but it cannot be cited in court at a later date.

Fixed Penalty Notice (FPN)

4.7 An FPN is appropriate for environmental offences and disorder and is an alternative to where a warning or caution might be imposed. This is a low level dispersal and is suitable for first-time offenders.

4.8 An FPN is not a fine. Payment will not be an admission of guilt but it eliminates the prospect of a record of criminal conviction on the offender. A Notice will only be issued where there is reason to believe that a suitable offence has been committed and there is sufficient evidence.

4.9 An FPN should not be issued where there is doubt about a defendant's understanding of the process the English language, where they are a non-resident foreign national, or there is insufficient evidence of identity and residence.

4.10 Offences punishable by an FPN will normally be witnessed directly by an appropriate officer of the Council. However, an FPN may be issued without an offence being witnessed directly by an officer where there is reliable witness testimony.

Other Alternatives

4.11 The following courses of action may be relevant in areas such as Environment, Regulation and Planning:

Advice – the provision of advice on how to comply with legislation;

Warning Letter – a warning that further infringement may result in legal action;

Statutory Notice – this may be served to require remedial action or the cessation of a particular action. These will normally be served where there is a continuing failure to comply with legal requirements. Failure to comply will often result in prosecution.

5. Re-commencing a Prosecution

5.1 Once a suspect/defendant has been informed that there will not be a prosecution, or the prosecution has been halted, that will normally be the end of the matter. However, there may be occasions where there are special reasons why the Council will re-commence the prosecution, particularly if the case is serious. These reasons include:

Rare cases where the original decision is shown to be clearly wrong and should not be allowed to stand;

Cases that are stopped so that more evidence that is likely to become available in the fairly near future can be collected. In these cases, the Council will inform the defendant that the prosecution could start again;

Cases where more significant evidence has been discovered after a case has been stopped.

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