

# **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 interests of 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 the Solicitor to the Council acting in accordance with the Scheme of Delegation to Officers;

Health and Safety Inspectors duly appointed under section 19 of the Health and Safety at Work, etc. Act 1974 from within the Community Services Department must institute proceedings under Health and Safety legislation.

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](http://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 Solicitor to the Council 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 Data Protection Act 2018, 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 Code.

2.5 The Council must ensure that the law is properly applied, that the relevant evidence is put before the Court and that obligations of disclosure are complied with.

2.6 The Council is a public authority for the purposes of current, relevant equality legislation. The Council is bound by the duties set out in the legislation.

2.7 The Council must also comply with the Criminal Procedure Rules and Criminal Practice Directions, have regard to the Sentencing Council Guidelines and the obligations arising from international conventions.

### **3. Whether 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.

3.2 Review of a case is a continuing process and the Council will take into account any change in circumstances as the case develops. This includes what becomes known of the defence case, any further reasonable lines of inquiry that should be pursued, and receipt of any unused material that may undermine the prosecution case or assist the defence case, to the extent that charges should be altered or discontinued or the prosecution should not proceed. Whilst investigators and legal officers work closely together, the final responsibility whether or not a case should go ahead rests with the Solicitor to the Council.

#### **The Evidence Stage**

3.2 The Solicitor to the Council must be satisfied that there is a 'realistic prospect of conviction' against each suspect on each charge. He must consider what the defence may be and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

3.3 The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves apply. A court may only convict if it is sure that the defendant is guilty.

3.4 When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following :

Whether there is any question over the admissibility of certain evidence. Can the evidence be held as inadmissible by the court and the importance of that evidence in relation to the evidence as a whole.

Whether the evidence is reliable including its accuracy or integrity.

Whether there are any reasons to doubt the credibility of the evidence.

Is there any other material that might affect the sufficiency of evidence?

Prosecutors must consider at this stage and throughout the case whether there is any material that may affect the assessment of the sufficiency of evidence, including examined and unexamined material in the possession of the Authority, and material that may be obtained through further reasonable lines of inquiry.

### **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.

3.6 It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will normally take place unless the Solicitor to the Council is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest may be properly served by offering the offender the opportunity to have the matter dealt with by an out of court disposal rather than bringing a prosecution.

3.7 The factors for and against prosecution in an individual case must be considered with care and fairness. Prosecutors should consider each of the following questions:

- a) How serious is the offence committed?
- b) What is the level of culpability of the suspect?
- c) What are the circumstances of and harm caused?
- d) The age of the suspect.
- e) The impact on the community.
- f) Is prosecution a proportionate response?
- g) Do sources of information require protecting?

3.8 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.

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

- a) a conviction is likely to result in a significant sentence;
- b) evidence of premeditation;
- c) the suspect was/is in a position of trust;
- d) evidence of the use or threat of violence;
- e) evidence of collusion;
- f) the length of time the offence continued for;
- g) the amount of damage/disturbance caused;
- h) 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.

3.10 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 financial 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.

3.11 The Council will also consider whether prosecution is proportionate to the likely outcome, and in doing so the following may be relevant to the case under consideration:

a) The cost to the Council and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty.

b) Cases should be capable of being prosecuted in a way that is consistent with good case management. For example, in a case involving multiple offenders, prosecution might be reserved for the key participants in order to avoid excessively long and complex proceedings.

3.12 For straightforward offences involving only a financial penalty which are summary only and can only be tried in the Magistrates Court where the Defendant is not required to attend Court the Council will where appropriate consider the use of the Single Justice procedure. This is where the matter is considered by a Single Justice on the papers without the attendance of the parties. The Single Justice can decide that the Single Justice Procedure is not appropriate and refer the matter for traditional hearing in the Magistrates Court. The Single Justice can convict and sentence or dismiss the charge as

appropriate. The Defendant could plead not guilty and the matter proceed to trial in the usual way. The evidence will need to be of a standard to convict the Defendant beyond reasonable doubt. The evidential test and public interest tests as set out above apply in the same way.

#### **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 Ministry of Justice Simple Cautions for Adult Offenders Guidance from April 2015 on administering simple cautions. (Although the guidance does not apply to local authorities they can follow this guidance if they wish.) 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.

##### **Other Alternatives**

#### **4.4 Certain private sector housing offences may be dealt with by a financial penalty.**

4.5 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.

#### **Fixed Penalty Notice (FPN)**

4.6 A Fixed Penalty Notice is appropriate for environmental offences and disorder and is an alternative to where a warning or caution might be imposed. This is low level dispersal and is suitable for first time offenders.

4.7 The Community Safety team are authorised by the Chief Executive in consultation with the Portfolio Holder for Business and Community to issue Fixed Penalty Notices (FPNs) in accordance with Public Space Protection Orders.

4.8 The Council's Environmental Compliance officers are authorised to issue FPNs for fly tipping offences.

4.9 The Council may adopt the relevant provisions of the legislation to be in a position to issue further FPNs in the future. Designated Officers will be authorised to issue a FPN for the offence for which a FPN is applicable.

4.10 A 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 FPN will only be issued where there is reason to believe, taking into account the public interest tests, that it is a suitable offence and that the evidential test is met that there is sufficient evidence to secure a conviction.

4.11 A FPN should not be issued where there is doubt about the Defendant's understanding of the process or the understanding of the English language. Where for example they are a non-resident foreign national or there is insufficient evidence of identity or residence.

4.12 Offences punishable by a FPN must be witnessed directly by an appropriate officer of the Council. In the event that an offender refuses to pay a FPN the matter will proceed to prosecution in the usual way.

## **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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DJE